The American Labor Legislation Review

VOL. XVIII SEPTEMBER, 1928 No. 3

CONTENTS

(Continued on following page.)

The AMERICAN LABOR LEGISLATION REVIEW is published quarterly by the American Association for Labor Legislation, 131 East 23rd St., New York, N. Y. The price is $1 a single copy, or $3 a year in advance. Annual subscription includes individual membership in the Association. Entered as second-class matter February 20, 1911, at the post office at New York, N. Y., under the Act of August 24, 1912. Acceptance for mailing at special rate of postage provided for in Section 1103, Act of October 3, 1917, authorized on July 13, 1918.

CONTENTS

(*Continued from preceding page.*)

"Sick Man of the Business"

Despite Opposition to Universal Health Insurance Through Legislative Action, The Commercial Insurance Companies Are Failing to Supply the Need Through Private Companies. This Failure Is Depicted in the above Cartoon Which Recently Appeared in *The Weekly Underwriter and The Insurance Press.*

Again—Progress and Loss

THE political campaign has again brought labor legislation and unemployment into general public discussion. Eagerly the leading spellbinders of the major political parties seize upon past legislative accomplishments as evidence of their good faith in promising—however guardedly—still further consideration for those who suffer the pains of accident, occupational disease, dependency in illness and old age, and the demoralization of involuntary unemployment.

As in past years, one task of those who continuously give attention to these general welfare problems will be to match the pre-election promises with belated party performance in legislative halls, and, at awkward moments, to draw painful attention to the deficiencies in the latter. The "lag" between promise and performance can be made less discouraging if citizens interested in legislative accomplishment will join in organized support of specific measures as is done step by step, year after year, through the Association for Labor Legislation.

A recent example of the "fruits of persistent effort" is the final extension this year of the benefits of our federal Longshoremen's Compensation Act to private employees suffering accident or occupational disease in the District of Columbia. The beginnings of administration of this law receive comment elsewhere in this Review.

On the judicial side a distinct backward step was recently taken by the highest court, which in the Ribnik case (see p. 279 of this Review), makes it necessary to set up new regulations in the various states to protect the unemployed from exploitation by fee-charging employment agencies. It is to be hoped that this emergency will also lead to action greatly strengthening the public employment service. Meanwhile, leaders in both major parties are committed to putting into effect the principle of long-range planning of public works as a "prosperity reserve."

Within a few months over forty state legislatures and Congress will be in session. The success of our immediate program depends mightily upon advance preparation—the gathering of new facts, preparation of reports, drafting of bills, effective dissemination of information.

An important opportunity for such educational work is offered by our twenty-second annual meeting—jointly with the American Economic Association and other related social science organizations—December 26-29, at Chicago. This national conference will be a timely occasion for a restatement—in the light of recent happenings —of the needs and the proposals for new legislation.

This issue of our Review is delayed on account of the sudden death, at the beginning of the summer, of Frederick W. MacKenzie who for eleven years was Associate Editor. Although in ill health during the past six years he continued to give to the constructive cause which here interested him a personal contribution of effective service beside which any money contribution, however large, must appear insignificant. "Mac's" untimely death at the age of forty-five is an irreparable loss to our Association. Those who knew him best will treasure the appreciation of his character and his work, written by Suzanne LaFollette, and now available in pamphlet form. His example of persistent efficient service, in pursuit of a lofty social endeavor, is before us all for respect and emulation.

JOHN B. ANDREWS, Secretary,
American Association for Labor Legislation.

Legislative Notes

THE 22nd annual meeting of the American Association for Labor Legislation will be held with the American Economic Association and other related social science societies, December 26-29, at Hotel Stevens, Chicago.

◇

THE annual convention of the **National Safety Council** was held during the first five days of October in as many New York City hotels.

◇

ON October 15-19 the **American Public Health Association** holds its 57th annual meeting at Hotel Stevens, Chicago.

◇

ON September 14, **James Duncan,** for many years Vice-President of the American Federation of Labor and member of the General Advisory Council of the American Association for Labor Legislation, died at Quincy, Massachusetts.

◇

ON July 28, **Crystal Eastman,** for several years the secretary of the New York State Branch of the Association for Labor Legislation, and author in 1910 of "Work Accidents and the Law," died in New York.

◇

REPRESENTATIVES of the **International Association for Social Progress** (formerly the International Association for Labor Legislation) met in special session in Paris on June 30. Reports were made on the work of the various national sections of the Association and a special meeting was called for Geneva, September 23-25, to discuss the protection of the family and the lengthening of the school years of children. Important matters of organization and finance were discussed, including the possibility of organizing new sections and particularly the desirability of securing again the financial support which was given before the war by the various governments, including our own. Among those present were Maheim and Varlez of Belgium, Füss of the International Labor Office at Geneva, Fontaine, Lazard and Fuster of France, Hoffman of Switzerland, secretaries Bauer and Boissard, and newer representatives from Germany, Holland and Japan. The American Section was represented by its associate secretary, Irene Osgood Andrews.

◇

STEPHEN S. WISE, rabbi of the Free Synagogue in New York, and a Vice-President of the American Association for Labor Legislation, in an address on September 12 before the National Association of Life Underwriters, appealed to the insurance men not to stand in the way of the enactment of **social insurance laws.** Universal insurance against death, old age, illness and unemployment, he said, are vitally needed.

THE Washington, D. C. *Trades Unionist*, of May 19, in commenting on the final enactment of the **workmen's compensation law** for the District of Columbia, remarks: "Secretary Frank Coleman of the Central Labor Union was the guiding spirit for the labor forces in the enactment of this bill and in cooperation with John B. Andrews of the American Association for Labor Legislation the compromise was adopted. The workers of this city owe a great debt of gratitude to these two individuals."

◇

ADDRESSING the Ohio State Medical Association on May 2, Dr. Carey McCord, medical director of the Industrial Health Conservancy Laboratories at Cincinnati, advocated an amendment to the Ohio workmen's compensation law to **provide compensation in all proven cases of occupational disease.** Only a limited list of occupational diseases is compensable under the present terms of the Ohio law. "It is unfair," said Dr. McCord, "to penalize those suffering from uncommon types of occupational diseases, or many common diseases which are not included in the list recognized by law."

◇

THE *Conference Board Bulletin*, published by the National Board, refers to the symposium on the **New Industrial South** in the AMERICAN LABOR LEGISLATION REVIEW for March as "a collection of brief, interesting articles on industrial and labor conditions in the Southern states."

◇

THE recent agreement in the New York men's clothing industry for the introduction of piece work in inside shops includes provisions for unemployment insurance. Employers agree to pay one and a half per cent of their weekly payroll into an unemployment fund, from which unemployment benefits for the New York members of the Amalgamated Clothing Workers of America will be drawn.

◇

AT the annual convention of the International Association of Government Labor Officials in New Orleans last May, the Pennsylvania Self-Insurers' Association through its secretary, Mr. Walter Linn, presented a **contributory workmen's compensation plan** as embodied in an amendment submitted by that Association to the 1927 Pennsylvania legislature. This proposal authorizes employers to deduct from the wages of their employees who have accepted the workmen's compensation act, an amount sufficient to equal pro rata one-third of the insurance premium. It is rather extraordinary that the time of this annual convention should have been taken up with a proposal of this nature.

◇

HIGH school teachers in Seattle have been compelled by the school board to sign **"yellow dog" contracts** renouncing their right to join the teachers' union. They are appealing to public sentiment and intend to carry the case to the state supreme court.

COMMISSIONER ANDREW F. MCBRIDE of the New Jersey State Department of Labor has taken steps to investigate through a representative committee the propriety of the Department's employing **physicians in workmen's compensation work** who are also retained by the insurance companies. This action is the result of organized labor's protest against this policy of the Department.

◇

A DISGRACEFUL defeat of needed improvements in the very inadequate **Virginia workmen's compensation law** was brought about by the Manufacturers' Association.

◇

STUDIES of industrial and street noises are much needed. Health and efficiency are menaced by **needless noise nuisances.** In the interest of clear, constructive thinking will someone offer a prize for a good short article on the subject?

◇

To prevent loss of time and the annual expenditure of millions of dollars for compensation and medical attendance through lack of organized safety work, the Building Trades Employers' Association of New York City has started one of the most intensive safety campaigns in the history of the City of New York.

◇

AMONG sensational events of the 1928 annual session of the Massachusetts General Court have been the establishment of a Public Bequest Fund to which private contributors may make gifts ultimately to be used for old-age pensions, the defeat of a measure to allow women employed in the textile industry to work from 6 P. M. to 10 P. M. in emergency seasons, and the impeachment of the Attorney General.

◇

A FORMAL opinion by Attorney General Ottinger of New York ends attempts of certain New York employers to evade the 1927 law giving a Saturday half holiday to women workers in New York State. Although the law provides that women may be employed nine hours a day for five days a week and four and one-half hours a day on the sixth, employers have spread the seventy-eight hours overtime allowed annually for emergency seasons over the year and added an hour and a half to the short day.

Said Attoney General Ottinger: "The authorized regular work day for women is eight hours, and they can be worked nine hours a day regularly for five days only so that they may be given a four and one-half-hour short day. If they are not to have the short day of four and one-half hours, all hours beyond eight on the other days are 'overtime.'"

◇

ON July 1, 700 **convicts** marched out of the Alabama mines, the culmination of years of effort to wipe out such compulsory labor underground. There still remains the greater task of removing from the mines of this country the needless hazards that yearly cost the lives of many more than 700 free laborers.

A COMMITTEE of the Welfare Council of New York City, in a report submitted to Mayor Walker, makes recommendations concerning measures for the **mitigation of unemployment.** Points emphasized in the Committee's report are: long-range advance planning of public work; more adequate facilities for free public employment service; prevention of abuses inherent in the operation of private employment agencies; coordination in the provisions for housing homeless men, and among agencies making such provisions; cooperation with industries which are trying to regularize the volume of employment, and regularization of dock employment.

The committee, of which Bailey B. Burritt is chairman, contends that "Industry and the City Government have a joint responsibility to make the flow of employment as regular as possible."

◇

THE Employment and Vocational Guidance Section of the Welfare Council of New York City, composed of the non-profit making organizations in the **employment and vocational** branch of social work, has recently published a directory which lists over 30 organizations in the city rendering such services. The Council has also established an Employment Information Service (located at 122 East 25th Street) to guide persons to the bureaus best suiting their needs.

◇

IN Canada the parliamentary committee on industrial relations has endorsed the principle of compulsory **unemployment insurance.**

◇

ACCORDING to a study made by the United States Public Health Service (Public Health Bulletin No. 176) workers exposed to Portland **cement plant** dust experienced "an abnormal number of attacks of diseases of the upper respiratory tract, especially colds, acute bronchitis, diseases of the pharynx tonsils, and also influenza or grippe." Outdoor work in all kinds of weather, such as was experienced by the quarry workers, appeared to predispose to diseases of the upper respiratory tract even more than did exposure to the calcium dusts.

◇

JAMES SIMPSON, Vice-president of the Trades and Labor Congress of Canada, was recently elected president of the **Employment Service Council of Canada.** The Council is advisory to the minister of labor on employment questions and in the administration of the free government employment bureaus throughout the country.

◇

THE head of a famous Connecticut school in sending membership subscription to the American Association for Labor Legislation, following one of its legislative victories, says: "Nothing is ever more cheering than suddenly to recognize that by simply doing the little one can as opportunity offers, that thread, interwoven with many others, becomes part of those strong cables that help pull the conditions of life to a higher level."

THE annual convention of the **International Association of Industrial Accident Boards and Commissions** was held September 11-14 at Paterson, N. J.

◇

AMONG visitors at the headquarters of the American Association for Labor Legislation during the past quarter were **Dr. Louis Varlez** of Ghent and Geneva, whose long-time constructive work on unemployment insurance is well known, and **Joseph L. Cohen** of Cambridge University, who has several English books on social insurance.

◇

THE El Dorado (Ark.) *News* in an editorial on the **need for workmen's compensation in Arkansas** says: "The usual run of big damage suits following a series of unfortunate industrial accidents, suggests to thinking people that Arkansas ought to follow the lead of the older industrial communities and create a workmen's compensation act. * * * The well-regulated state has little patience with the condition that obtains when a man injured in the course of his daily work must hire a lawyer to get justice. In mass employment it is obvious that there ought to be an automatic system of compensation. Other states with a few exceptions have already adopted the workmen's act, and Arkansas, with its oil and paper and wood-working plants, ought to follow along unless it expects to see this economic handicap divert capital and industry to other sections."

◇

COMMENTING editorially on the new District of Columbia workmen's compensation act, the Jackson (Miss.) *Clarion Ledger* refers to the **five non-compensation states** and points out that "such states as do not already have this class of laws are likely to get on the band wagon and make the new form of insurance general throughout the nation."

◇

A COMMISSION has been appointed by Governor McMullen of Nebraska to study the **workmen's compensation law** and to make recommendations for its improvement to the next legislature. The commission will devote special attention to what appear to be the two major problems in Nebraska: medical fees and compensation insurance costs.

◇

THE Colorado Federation of Labor has secured the necessary 30,000 signatures to a petition placing an amendment to the **compensation law** on the ballots in the November election. The modest changes sought include an increase in the weekly maximum from $12 to $16 and the total maximum amount from $3,750 to $4,992; the payment of two-thirds of wages instead of fifty per cent, and more nearly adequate medical care.

◇

THE recent convention of the International Ladies' Garment Workers' Union unanimously voted to cooperate with the American Association for Labor Legislation in its **old age pension** campaign.

In all too many cases, the modern skyscraper, commonly looked upon as a monument to the skill of the architect, engineer and builder, is really a headstone for the men who were killed during the construction period, declared Major W. R. Richards, of the Associated General Contractors, in addressing the Sixteenth Annual Safety Congress. Contractors with few exceptions, he said, have refused to follow the example set in other industries where **accident prevention** has been found successful. The first essential of accident prevention is the sincere interest of the employer in the project, Major Richards pointed out, adding that safety must begin at the top.

◇

Failure of the American Woolen Company and its affiliated companies to continue the **group life insurance** which was provided for their employees in 1919, and similar discontinuance recently of group insurance by the American Bosch Magneto Company and the American Writing Paper Company, points to the need of legislation to give stability as well as general application to workmen's insurance. Announcement of the discontinuance of group insurance by these three big concerns emphasizes anew the distressing element of uncertainty in such private schemes of industrial insurance. This uncertainty was also shown conspicuously in the plight of the former employees of the Morris Packing Company who worked for years under a company pension plan only at the end to be deprived of the benefits. Lack of stability of voluntary plans in industry for unemployment insurance was recently demonstrated by the suspension of the unemployment fund in the cloak industry of New York City. Public action through legislation is the effective, permanent, and certain method of protecting the industrial workers against the hazards of accidents, disability, old age and unemployment.

◇

Commenting on the failure of the New York legislature to pass the bill to provide for an **exclusive state fund for workmen's compensation insurance**, against which "the insurance companies lobbied," the New York *World* asks: "Why continue private insurance of compensation claims when the state can do the work cheaper and better?"

◇

Reorganization of the state government of Virginia, with an estimated yearly saving of $325,000 in administrative expenses, has been provided by a law enacted at the recent session of the legislature. In view of the importance of effective **administration of labor laws** it is worthy of note that the workmen's compensation act will continue, as at present, to be administered by a commission.

◇

"Before workmen's compensation laws were passed by Ohio and many other states, men engaged in hazardous occupations assumed the risks themselves. Except when the employer could be proved negligent, neither these workers nor their widows and orphans could collect com-

pensation for personal injury caused by industrial accident. Under provision of wise and humane laws, compensation is now paid out of a **State insurance fund** for accidental injury or death of industrial workers. —*Toledo (O.) Blade.*

◇

George St. J. Perrott has been appointed as superintendent of the Pittsburgh Experiment Station of the United States Bureau of Mines. He will direct the activities of approximately two hundred scientific, technical and other employees in the conduct of various investigations dealing with **safety in mining,** the elimination of waste in the mining and metallurgical industries, and the technology of fuels, gases, and explosives. At this government experiment station impressive demonstrations have been made of the high explosibility of coal dust and the effectiveness of the rock dust remedy for mine disasters due to coal dust explosions.

◇

"Because bituminous coal is the largest single source of power for our industrial system," says *Coal Age,* "the industry most certainly is 'affected with a public interest.' It is high time that the enormous cost of doing without a **constructive program for the bituminous industry** be saved. If some one can show how it can be done without federal cooperation let him step forward at once. If not, let us stop temporizing."

◇

Penalties on both employer and employee for failure to comply with **accident prevention** regulations of the State Industrial Commission are provided in the Wisconsin workmen's compensation law. The compensation paid by the employer is increased 15 per cent for injuries to the employee under hazards that the commission has outlawed. On the other hand, if the injured employee has wilfully neglected to use safety devices, his compensation is reduced 15 per cent. Those industrialists who still insist that the reduction of accidents is chiefly a matter of making employees be careful may be interested in the fact that in the first half of 1927 under this provision of the Wisconsin law, the cases where the employer was at fault were more numerous than those where the worker was negligent in the proportion of 45 to 1.

◇

An order of the Women's Minimum Wage Board of the Province of Quebec sets a **minimum wage** of $12.50 a week for experienced women working in printing, bookbinding, lithographing, and envelope-making establishments in the City and Island of Montreal and a radius of ten miles around and beyond Montreal. Apprentices are to receive a minimum of $7 weekly for the first six months, $8 for the second six, $9.50 for the third six, and $11 for the fourth six.

◇

A wage board to recommend **minimum rates of wages** for women and girls employed in the manufacture of electrical equipment and supplies, has been established by the Massachusetts Minimum Wage Commission. The board, which began its work January 12, is composed of fifteen

members, six representing employers, six representing the women employees, and three representing the public, one of whom is to act as chairman. The occupation under consideration—the twentieth to be brought within the scope of wage board action—includes the manufacture of such products as incandescent lamps, insulated wire, radio and radio parts, mica, signal and protective systems, and various kinds of electrical equipment and appliances for household and office use.

◇

THE governments of the United States and Great Britain will continue for the fourth year their joint research concerning the **safety and health of coal miners.** These researches, which include explosibility of various kinds of coal dust and prevention of coal dust explosions, are being conducted at Pittsburgh and Bruceton in the United States and at Sheffield and Buxton in Great Britain.

◇

A VETERAN of **labor law administration** returned to the public service when Will J. French was recently appointed as chairman of the California Industrial Accident Commission. Mr. French served on the commission for thirteen years, from 1911 to 1924. He resigned during the administration of Governor Richardson. Mr. French has achieved an enviable reputation as an able, courageous and efficient administrator.

THE metal mining industry in the United States experienced a higher death rate but a lower injury rate from **accidents** in 1926 than in 1925, according to the United States Bureau of Mines. The death rate for 1926 was 3.47 per thousand men employed as compared with 2.99 in 1925. A single disaster—a mine cave-in caused by inrush of water—killed 51 men.

◇

APPOINTMENT of Walton H. Hamilton as professor of law at Yale University is a significant recognition of the increasing need for **broad training of lawyers in economics.** As an editorial in the New York *Telegram* puts it: "Mr. Hamilton is an eminent economist whose study of the law has been centered in its effect upon the economic life of the country rather than its legal technicalities. By making such an appointment Yale University makes formal recognition of the fact that good lawyers must be more than good logicians and technical craftsmen. It recognizes that they must have a better understanding of the economic life of the country for which law provides the principal guide. In a country which is run largely by lawyers the importance of the step which Yale has taken is of the first magnitude." In this REVIEW for September, 1926, appeared a constructive discussion by Mr. Hamilton of a most serious social problem—"The Problem of Bituminous Coal."

◇

AT the Bayonne refinery of the Tide Water Associated Oil Company an **accident prevention** campaign in 1927 resulted in a decrease of accidents of 46½ per cent as compared with 1926. The number of days lost by workmen through accidents was reduced 31 per cent.

Administration of District of Columbia Accident Compensation Has Promising Beginning

THE District of Columbia Workmen's Compensation law, which was finally approved by Congress last May,[1] went into effect on July 1. This act extends the benefits of the federal Longshoremen's Act of 1927[2] to private employees in the District. These workers, who for so many years have been practically without remedy in case of industrial accident, are now at last protected by a modern and adequate workmen's compensation law.

It has been variously estimated that there are between 60,000 and 80,000 wage-earners affected by the new law, but an analysis based on the 1920 census figures would indicate that the number is vastly greater. There were, in 1920, 143,000 persons gainfully employed exclusive of domestic servants, agricultural workers, the self-employed, etc., who are not included within the terms of the act. If the "gainfully employed" have increased in the same proportion as the total population (about 44%) there are apparently 145,000 workers after deducting the 60,000 Civil Service employees who are covered by the law.

The U. S. Employees' Compensation Commission with its year's experience in administering the Longshoremen's Act, is, of course, especially suited to enforce those provisions in respect to the private employees in the District. Furthermore, since this law now applies uniformly to these workers when employed on land as well as on navigable waters, an unusual degree of effectiveness in administration can be secured. The District of Columbia is the only "state" where this much-to-be-desired uniformity exists.

As previously reported in this Review[3] the Commission early adopted the policy of issuing opinions to clarify difficult and disputed

[1] See "Congress at Last Enacts Compensation Law for Wage-Earners in the District of Columbia!" by John B. Andrews. *American Labor Legislation Review,* Vol. XVIII, No. 2, June, 1928, pp. 139-142.

[2] For outline of the new federal Longshoremen's Compensation Act, which was prepared by the American Association for Labor Legislation in cooperation with the International Longshoremen's Association, see "Congress Enacts Federal Accident Compensation Law for Harbor Workers!" *American Labor Legislation Review,* Vol. XVII, No. 1, March, 1927, pp. 13-14.

[3] See "Commission Adopts Sound Policy of Clarifying Problems Arising Under Longshoremen's Compensation Act." *American Labor Legislation Review,* Vol. XVII, No. 4, December, 1927, pp. 349-350.

questions as they arise under the Longshoremen's Act. Many of these interpretations are equally applicable to the District with the result that persons affected by the new law are likewise benefited. Moreover, the Commission is wisely continuing this policy in respect to the District. The Bulletin released shortly before the law took effect presented in detail the Commission's views concerning some of the questions brought to its attention, and thus reduced to a minimum the possibility of employers or employees unwittingly violating the law.

Late in May the Commission met with one hundred and twenty insurance company representatives to discuss insurance regulations, forms of policies and rates. Certificates of authorization to write insurance under the act have been issued only after investigation into the standing of the companies which made application. About forty of the leading casualty companies have thus far been granted permission to write compensation risks in the District.

Robert J. Hoage, for nine years the chief statistician of the Commission, has been appointed the deputy commissioner in charge of the District. He has had extended experience in the operation of compensation laws in the states of Washington and Oregon and through his work subsequently with the Commission has become intimately familiar with the provisions and administration of the Longshoremen's Act.

The American Association for Labor Legislation will follow closely the operation of the new District of Columbia Workmen's Compensation Law and important developments will be reported in the Review. The Commission has already proven its efficiency in administering the Longshoremen's Act and undertaking the preliminary work for the District. There is every evidence that these high standards will be maintained.

"The District of Columbia is Congress's home town, and as such ought to get the benefit of the most advanced legislative ideas. But events do not seem always to work that way. Accident compensation for workers has become so well established in this country since it was first tried in 1911 that failure to provide it now puts those responsible on the defensive. Yet somehow the District of Columbia has been neglected. For seven years the American Association for Labor Legislation worked to get protection for the 144,000 persons affected, without success until May 14, last, when the Blaine bill was passed. It is on the same lines as the longshoremen's compensation act which went through last year. Forty-three States have enacted workmen's compensation laws. Arkansas, Florida, Mississippi, North and South Carolina still lag behind the procession, but the campaign is making progress there. No state, having once tried the new way, has returned to the old, dilatory, and expensive method of damage suits."—Editorial, *The Nation*, June 20, 1928.

First Year of Longshoremen's Compensation

THE Federal Longshoremen's and Harbor Workers' Compensation Act has now been in effect for over a year.

When consideration is given to the fact that a fundamentally different system of law has been put into operation affecting hundreds of thousands of workers and thousands of employers throughout the country, the transition has been remarkably successful. This is due to a great extent to the broad and well-considered policies of administration formulated at the beginning by the United States Employees' Compensation Commission.

To secure proper administration, the Commission has established fifteen districts throughout the United States with a deputy commissioner in charge of each district. There are now thirteen deputies—two of these handling the work in two districts each. District No. 2, comprising the port of New York, is by far the most important in the volume of business. It has been estimated that approximately forty per cent of the entire business of the Act is transacted through the New York office. It should be of interest, therefore, to examine more carefully into the operation of the law in New York.

At the close of the first year, 2,850 employers were enrolled under the Act in the New York District. At that time, 10,835 injuries had been reported, including 46 deaths. The amount of compensation paid and the amount estimated to be paid for injuries and deaths occurring during the year totalled $1,580,700. By June 30, 9,471 cases had been settled and finally closed with but 84 formal hearings necessary to secure final disposition of the claims. There had been but three appeals to the courts, one of which was a friendly suit to test an obscure provision of the law. As Commissioner Locke of the New York District has pointed out, this remarkable showing would not have been possible without the full and whole-hearted cooperation of those affected by the Act.

One of the most significant developments during the past year is the stimulus which the law has given to accident prevention. The Waterfront Employers of Seattle, a leading employers' organization on the Pacific Coast, has for several months been engaged in drawing

up safety regulations along the lines now provided in the British Code for longshore work. Shipowners in New York have likewise been devoting increased attention to safety work. The Commission has authorized the appointment of an assistant safety engineer to carry into effect the accident prevention provisions of the law. It is to be hoped that the administrative officials with the cooperation of both employers and employees will promptly formulate a modern safety code for this extra-hazardous employment.

The year's experience is a real achievement and the Commission is to be congratulated. Continued watchfulness is essential, however, if the high standards already set are to be maintained.

Vocational Rehabilitation for the District of Columbia Now Up to Senate

THE Summers bill for vocational rehabilitation of industrial cripples in the District of Columbia (H. R. 13251) passed the House at the last session of Congress.

Reporting favorably on this bill, the House Committee on Education, on May 9, said, "Rehabilitation work if set up and carried on in the District of Columbia, would provide a national laboratory for discovering ways of rehabilitating disabled persons." Moreover, "a person injured in industry can be rehabilitated for less than it would cost to maintain him as a public charge. * * * This program would not only be of humanitarian character but also a direct economy in the use of Federal funds."

Forty-one states are already cooperating with the federal government in the rehabilitation of industrial cripples. Congress should promptly follow suit and pass this much needed and long delayed measure for the District of Columbia.

Workmen's Compensation Challenges Somnambulic South

By Cornelius Cochrane

ARKANSAS is beginning to wake up and take notice of the fact that workmen's compensation presents a solution to her industrial accident problem.

Early last fall, at the request of Commissioner Rooksbery of the Arkansas Bureau of Labor and Statistics, the American Association for Labor Legislation prepared and submitted for consideration the draft of a modern workmen's compensation law. This bill was discussed at length with several interested employers in the state and the officers of the state Federation of Labor.

At the annual convention of the Arkansas Federation of Labor in December, the executive officers and the legislative committee were instructed to present at the next legislative session a bill for a workmen's compensation law. Another resolution instructed the secretary to conduct a campaign of education on workmen's compensation among the affiliated unions.

In February a state wide meeting of the various interests directly affected was held at Little Rock for the purpose of perfecting an organization to secure the adoption of compensation legislation. This conference was attended by representatives from such important industries as oil, lumber and coal, the power interests, and the officers of the Federation of Labor. The representative committee which was created has been working steadily in cooperation with Commissioner Rooksbery to secure an agreed bill and the progress already made indicates that a measure satisfactory to both employers and employees will be submitted early in the 1929 legislative session. The American Association for Labor Legislation has been cooperating throughout the year in this important work and will continue to assist in the educational and legislative campaigns.

North Carolina is likewise responding to the increasing need for workmen's compensation protection. For years the state Federation of Labor has endeavored to secure the enactment of a compensation law and many employing groups have at last fallen into line. Thus it is reported that the lumbering interests in the western part of the state have endorsed the principle because of the high cost of liability

insurance. The North Carolina Branch of the Associated General Contractors of America took a leading part in the campaign to secure a reasonable law at the legislative session two years ago.

At the 1928 Convention of the state Federation of Labor at Charlotte last August workmen's compensation was one of the principal questions considered. A representative of the American Association for Labor Legislation who was present throughout the three days' session discussed the theory and operation of compensation laws and explained in detail the questions which were raised by the delegates in respect to specific phases.

The resolution which was subsequently adopted was framed to meet the principal difficulties which had been encountered in the past—questions involving for the most part the benefit provisions in respect to which labor apparently had not been in accord. The convention went on record in favor of a seven day waiting period, reasonable medical care in addition to cash compensation, a scale of not less than fifty per cent of wages, and commission administration, one commissioner to be a representative of labor.

It has been stated that North Carolina employers are now more than ever interested in compensation legislation because employers' liability rates have been raised to an unprecedented degree. The last increase in rates came shortly after the 1927 legislature adjourned. The Industrial Council of North Carolina, comprising representatives of the principal industries of the state, which was recently organized primarily to consider problems of taxation, will undoubtedly take definite action on the question of workmen's compensation. It is to be hoped that this urgent problem will be discussed by a special committee of the Council meeting with officials of the state Federation of Labor in order that agreement may be reached on a specific proposal before the legislature convenes next January.

The outlook is favorable for the extension of the compensation principle in the non-compensation area in 1929. The bill which was defeated by a close vote in the Florida legislature two years ago will be again presented, and the South Carolina Federation of Labor, it is understood, will submit a proposal as soon as the legislature convenes at Columbia.

The American Association for Labor Legislation is following closely the developments in these four states and is prepared to render all assistance possible in the coming legislative campaigns.

"A Well-Managed Fund"

"OFFICIALS having charge of the State insurance fund for workmen's compensation are entitled to a feeling of gratification over the success of the fund. More than 22,000 employers are insured in it and, despite its low rate, it is in excellent financial condition. * * * The size of the task before those administering this fund may be gauged by the fact that last year it investigated more than 47,000 accidents, audited more than 68,000 medical bills and paid out more than $1,000,000."—From Editorial in *New York Evening Post.*

New Compensation Act in Porto Rico

AN unfortunate step has apparently been taken in Porto Rico partially at least owing to misrepresentation of workmen's compensation elsewhere. Employers are granted the option of insuring with the Porto Rico Mutual Insurance Association, the organization of which is provided for in the new act. Governor Towner's memorandum shows that this feature was introduced with the argument that this is the form of compensation insurance in Massachusetts which has been approved in practice. But the Bay State Commonwealth abandoned her Employees' Insurance Association many years ago.

Another disquieting complication was the irregularity in the last moment jamming through of the bill which led to vigorous public protest and caused Governor Towner himself to refer the matter to certain local legal authorities before adding his signature.

Can Workmen's Compensation Benefit Seamen?

THE Bureau of Labor Statistics of the U. S. Department of Labor has completed a survey[1] of the amounts actually received by seamen in accident settlements. This report is especially timely in view of the fact that the Longshoremen's and Harbor Workers' Compensation Act has focused attention on the question of compensation for seamen.

Members of the American Association for Labor Legislation will recall that when the longshoremen's bill was first introduced, members of the crew were specifically excluded because of the strenuous opposition of the Seamen's Union to the compensation principle. It will also be remembered that subsequent efforts by the House Judiciary Committee to include seamen were finally abandoned only when it became apparent that such a provision would defeat the legislation.

During the hearings it was contended that the seamen are already adequately protected; that if injured, they are entitled to full wages until the end of the voyage in addition to "care and cure," and that they may sue for damages under the terms of the U. S. Employers' Liability Act. "And so we enter the most emphatic protest against the seamen being included in this measure," said Andrew Furuseth, President of the Seamen's Union.

Discussion of this question before the Committee once more emphasized the lack of information in respect to accidents among this class of workers. On February 16, 1927, Chairman Graham introduced a joint resolution "to provide for an inquiry into the employment hazards of seamen and into the advisability of including seamen in a Federal workmen's compensation system," but no action was taken in regard to it.

The Bureau of Labor Statistics, however, undertook a study in an effort to determine just how seamen fare according to their present status. This investigation was based upon claims settled in 1926 in the New York City area and the 1,195 cases reported "are representative of settlements consummated in one year for injury to all classes of American seamen."[2] Three points were covered:

[1] "Settlements for Accidents to American Seamen," *Monthly Labor Review*, Vol. 26, No. 6, June, 1928, pp. 6-15.
[2] ibid.

(1) the physical injury, (2) the amount actually received either through direct settlement or court action, and (3) the compensation that would have been paid if the injured man had been subject to the provisions of the Longshoremen's Act.

Of the 1,195 cases covered, 899 were direct settlements not involving legal fees. The average amount received was $262.47 per case, as compared with the estimated average settlement of $352.56 according to the provisions of the new federal act employed in this study.

Included in this number were 25 cases for which no claim was filed, indicating "a lack of knowledge on the part of seamen as to their rights when injured, or a feeling of the futility of trying to prosecute a claim because of inexperience in these matters."[3] The average net payment to these workers was $6.02, whereas under the terms of the Longshoremen's Act the probable recovery would have averaged $396.94:

"In the 296 cases involving legal fees the amount of the settlement included the amount paid by the seaman as legal fees. Such information as could be obtained indicated that the cases were taken by attorney on a contingent fee. This was stipulated as one-half or more than one-half of the amount recovered in 87 per cent of the 62 cases in which the fee was learned. The average of the gross amounts paid by the insurance or shipping company in the 296 cases was $1,317.03 per case. Assuming that the legal fees in these cases were as low as 40 per cent of the settlement, the average net amount received by the seaman would have been $790.22 as compared with the average estimated settlement of $821.07 under the assumed conditions of this study."[4]

It is interesting to note that this report includes evidence of the occasional large awards which account primarily for the continued sentiment on the part of two great classes of workers—seamen and railroad employees—in favor of employers' liability suits for damages. The facts presented, however, clearly demonstrate that the 1,195 seamen when considered as a whole would have been better off under the terms of the Longshoremen's Act.

Ship-owners, pointing to the successful experience under this federal compensation law will undoubtedly again petition Congress to include seamen within its provisions. The study conducted by the U. S. Bureau of Labor Statistics—which is the most recent and authentic investigation made of the subject—will furnish a powerful argument for their appeal.

---

[3] ibid.
[4] ibid.

Old Age Pension Legislation

"THERE are many instances on record of middle-aged men and women who find it extremely difficult to get a new job because of their age, even though it is obvious that they have many years of useful work ahead of them," says Dr. Louis I. Dublin (statistician for the Metropolitan Life Insurance Company) in *Health and Wealth.*[1] "Probably there is no greater tragedy in modern life than this forced retirement of workers still in the prime of life—and the waste for society in general is too obvious to require comment. Undoubtedly the increasing tendency of firms to provide pensions for aged workers is an important factor in the situation. It would seem the part of wisdom to devise some kind of a pension plan which, based upon sound actuarial calculations, could nevertheless make some arrangement whereby the older worker would not be scrapped just because he has passed a certain birthday, provided he still has his health and skill."

ADDITIONAL light is thrown on the problem of the unemployed at the age 45 to 64 by the 1927 report of the Department of Public Welfare, Chicago. "From the figures of the Emergency Lodging House it appears that 401 out of every 1,000 persons applying there for work and shelter were between those ages, while at the Lodging House in Union Avenue, 353 out of every 1,000 persons applying for work and free lodging fell within the same age range. In other words, from 9% to 14% more persons between the ages of 45 and 64 applied for work and free lodging than the average of those gainfully employed in Illinois between these ages." (261 out of every 1,000 persons gainfully employed in Illinois are between the ages of 45 and 64).

ON June 12 Massachusetts passed a bill establishing a "Public Bequest Commission and a Public Bequest Fund." The Fund will consist of "any bequests, devises, contributions or other gifts." When the amount of the Fund reaches $500,000 the commission may distribute it to "worthy citizens of the Commonwealth," who, in the opinion of the Commission, are entitled to benefits by reason of old age and need. This legislation was supported by Wendell Phillips Thore, the outstanding advocate of old age pensions in Massachusetts, by the state labor movement and the American Association for Labor Legislation. It was opposed by the local representatives of the Old Age Security organization.

IN Rhode Island a resolution was passed April 27, 1928, which authorizes the State Commissioner of Finance to investigate and report upon the problems of old age pensions—to investigate systems provided for in other states and to gather all available facts relating to the situation among the aged within the state of Rhode Island. The findings are to be reported not later than January 15, 1929.

---

[1] "Health and Wealth," by Louis I. Dublin, Harper & Brothers, 1928, pp. 161-162.

"Let me first go over the case against automatic discharge," continued Mr. Davis. "The hastiest glance at the facts will disclose how needless it is. In the last 30 years * * * science has greatly extended the span of human existence. It has given to every individual the chance not only of a longer life but of one more vigorous and free from disabling disease. * * *

"With the infinite number of our industrial operations coming to be done by machinery ever more automatic and easier for human hands to run, the reasons for firing the older workers fade to almost nothing. * * *

"With the pace of our business life only a little slackened from what it was a year ago, we nevertheless have unemployment, and I should rather draw any other conclusion than the one which the contrast forces upon me. No one can be certain, but I fear that a considerable number of the people at present out of work represent a part of the labor 'saved' by some of the modern labor-saving machinery. * * *"

Miss Clara McComb, director of the Family Welfare Association of Springfield, Mass., in a recent address declared that the aim of the Association for years has been similar to that proposed in old age pension legislation: keeping aged dependents in their own homes. A special effort has been made to keep old couples together. The Association "finds the problem of old age steadily increasing," said Miss McComb, "but contrary to the national figures which show that 27 per cent of the dependent aged are foreign-born, here in Springfield we have nearly 100 per cent native New Englanders under our care."

In an editorial on "Pensions or Homes," the Sandpoint (Ida.) *News* says: "A generation ago the trend was all toward the institutional form of caring for dependents, including children, but to-day the trend is the other way. It is now considered best that orphan children should be adopted into families rather than be reared in orphanages, and the pension form of relief for the aged has a wider and more flexible application to our social life than has the institutional form. * * * It is not hard to see why the pension is preferable to the institution."

Great Britain's Old Age Contributory Pension Act went into full effect in January. More than 1,250,000 aged persons have now been added to those (totalling 15,000,000) who are protected by social insurance against ill health, unemployment, accident, and old age. The New York *Evening World,* pointing out that the act "will affect at once not fewer than 450,000 men and women between the ages of 65 and 70," says: "It is unquestionably the most important piece of constructive social legislation in the history of the modern world."

In a letter to the Philadelphia *Record,* one who knows how it feels to be in a poorhouse says: "The crying need of the present day seems to be for some plan of pensioning men and women too old to work. As I am an inmate of the city's home for the indigent, I see more clearly than ever before how very necessary such a plan is. * * * The poorhouse means sorrow and degradation to many thousands of helpless old folks. They deserve to end their days amid more congenial surroundings."

ANNOUNCEMENT of a study of industrial pensions in the United States by the Labor Bureau, Inc., states that approximately 400 private corporations have old age pension systems, 315 of which cover more than 3,000,000 workers. About 89% of these plans are of the "non-contributory discretionary" type, the costs being borne entirely by the company.

T. M. Sinclair and Company, meat packers of Cedar Rapids, Iowa, recently abandoned its industrial pension plan. It was feared by the company that the accumulated liabilities of a pension fund were so great that in case of a financial reversal distress would result to those dependent on the pension fund.

Old Age Pensions in Wisconsin

The Wisconsin old age pension law became effective May 12, 1925. The adoption of the provisions of the act is optional for any county on a 2/3 vote of the members of the county board. The state appropriates $200,000 yearly for reimbursing the counties, paying them 1/3 of the amount expended. According to the Report on Old Age Pensions in Wisconsin, 1927, compiled by the State Board of Control, during three years the law has been put into operation in five counties—Wood, Brown, Outagomie, La Crosse, Sawyer. (In Brown County the law was in operation only one year, January to December, 1926. The County Board revoked the system in November, 1926.)

During the year 1927 a total of 295 were on the pension rolls in the four counties in which the law operated. The average pension for all counties was $19.20 per month. The total amount expended by the counties during the period from 1925 up to and including 1927 was $49,638.50. The state has paid back to the counties $16,546.17.

Eighty-three per cent or 245 of the 295 pensioned have no present occupation while 17% are still "able to work." "General debility, disease, and loss of limb have forced many to give up their former occupation. Some found lighter work but the majority were forced into retirement."[1]

"'Old Age' at Fifty"

"Now, it appears, this arbitrary discharge of the worker, regardless of his fitness, at an age arbitrarily fixed is becoming a general policy," said Secretary of Labor James J. Davis in an article which appeared in the North American Review last May. "The policy is spreading through the executive offices of business, as it spreads through factory and shop. The tendency is to fix the age of retirement at a limit ever progressively lower. By some employers it is placed as low as 40 years. It begins to be serious and alarming. And observance of the practice reaches its peak in the very day when the reasons for it have virtually disappeared. Not only have the reasons for arbitrary discharge for age disappeared, but their place has been taken by every gravest reason why employment should be made continuous and safe for the maximum number of workers, regardless of age.

---

[1] "A Survey of Poor Relief in Wisconsin with Special Emphasis on Old Age Pension Law," by Margaret J. Dale, University of Wisconsin, 1928.

Pensions under Laissez-Faire

From *The New Republic*, June 27, 1928.

SIR: After having worked on the following case for the past six weeks, I have become convinced that every progressive editor should use his best efforts for the establishment of pension systems for aged employees.

M— F—, of Cleveland, Ohio, was employed by the B— Company for twenty-six and one-half years. Six weeks ago he was told that his services were no longer needed; that his services were of such a character that he "could have a recommendation a yard long," but that, since he was now sixty-eight years of age, he was too old for the B— Company, and that he could now depend upon charity for the support of himself and family.

In an effort to save M— F—, we went to the president of the organization, but to no avail. It seems that a pension system is being favored now, and the several firms are gently easing their oldest employees out of the way so as to save themselves from paying them pensions!

MARTIN M. GOLDBERG.

Cleveland, O.

"Prosperity Reserve" Bill Will Test Post-Election Interest

THE "prosperity reserve" bill[1] which would, if enacted, enable the federal government to put into operation the policy of long-range advance planning of public works, will be on the Senate calendar for consideration as Congress re-convenes in December.

As readers of this REVIEW will remember, the bill authorizes an appropriation of $150,000,000 for public works, including rural post roads, river and harbor improvements, flood control, and public buildings outside the District of Columbia—in addition to the amount normally appropriated for public work construction. Work may be undertaken only when the volume of general construction throughout the United States (based upon the value of contracts awarded) has fallen 10% for a three month period below the average of the three preceding years.

The Senate Committee on Commerce reported the bill favorably on April 12 but Congress did not see fit to consider it before adjourning in May owing to the objection of one Senator. It is hoped that this measure will not be neglected because of post-election apathy but will come up for consideration early in the coming season. The passage of this bill is as important now as it would be were we in the throes of a severe unemployment crisis.

[1] See "'Prosperity Reserve' Bill Favorably Reported by Senate Committee," *American Labor Legislation Review*, Vol. XVIII, No. 2, June 1928, pp. 145-148.

Wagner Revives Kenyon-Nolan Bill

THE Wagner bill[1] providing for the establishment of a federal-state employment bureau system will be among the important measures in Congress dealing with unemployment at the December session. The bill is, in its essentials, identical with the Kenyon bill introduced in the Senate in 1921 and with the Nolan bill introduced in the House in 1925, which had wide support.

The bill would make the United States Employment Service a bureau of the Department of Labor with a director-general appointed by the President, and a woman assistant director-general appointed by the Secretary of Labor. It would authorize an annual appropriation of $4,000,000 to be allotted by the Secretary of Labor among the various states on the basis of population. Whenever a state is maintaining or is ready to maintain a system of employment bureaus in cooperation with the United States Employment Service, the amount which has been allotted by the Secretary of Labor may be paid to the Treasurer of that state, provided that its appropriation is at least 25% of the amount allotted by the Secretary of Labor, and not less than that appropriated by the state for public employment offices in 1918, nor less than $5,000, and provided that the bureaus are maintained by the state in accordance with the rules and standards of efficiency prescribed by the director-general.

For more than seven years the American Association for Labor Legislation as part of its Standard Recommendations for the Relief and Prevention of Unemployment has endeavored to secure the enactment of such legislation for the establishment of an adequate permanent national-state system. Although a number of bureaus are now rendering efficient service in connecting jobs and men, many bureaus are run with such inadequate appropriations that they serve neither the workers nor the employers. Eight states—Montana, New Mexico, Mississippi, Alabama, Florida, South Carolina, Delaware and Vermont—have no public employment bureaus at all.

All the more important is the establishment of an efficient national-state public employment service since the recent decision of the United States Supreme Court declaring unconstitutional the New Jersey statute which provided for the control of fees charged by private employment agencies.[2] Because this decision very drastically limits state control of private agencies and accompanying abuses, there is especially urgent need for a system of public employment bureaus.

[1] (S. 4157) introduced by Senator Wagner of New York, April 20.
[2] See pp. 279 of this REVIEW.

Unemployment Insurance Extended for Clothing Workers

FIVE years ago unemployment insurance was established in the Chicago men's clothing industry. By the terms of the agreement between the Amalgamated Clothing Workers and the Clothing Manufacturers' Association, the workers, during these five years, have contributed 1½% of their weekly wages and the employers 1½% of their weekly payroll to the Unemployment Insurance Fund. By March 1, 1928, receipts had totalled $4,300,000 and benefits paid to the Chicago members had amounted to $3,300,394.40.

Within the last few months further significant progress has been made in the clothing industry. The Chicago employers have raised their contribution to 3% of the payroll while the workers still contribute 1½% of their weekly wages. The new Rochester agreement establishes a plan similar to that adopted in Chicago five years ago. Most important of all is the inauguration of unemployment insurance in the New York market, covering about 40,000 workers. The employers contribute 1½% of their weekly payroll, which is the whole subscription to the insurance fund—the cost of unemployment being thus entirely borne by those in the most strategic position to prevent it. The agreements now in Chicago, Rochester and New York cover about 70,000 clothing workers.

Sidney Hillman, President of the Amalgamated, in referring to the insurance provision in the New York agreement, says: "It is our purpose to extend it to all of the clothing workers in the United States where we maintain contractual relations with the manufacturers."

"Unemployment insurance," says C. D. Jaffee, of the New York Clothing Manufacturers' Exchange, "will strengthen the impartial machinery established four years ago and will help stabilize the industry."

A necessary part of the administration of any employment regulatory system is the existence of efficient employment exchanges. The exchange maintained by the Amalgamated in Chicago has afforded the union the means of knowing the exact state of employment within the industry and it has at the same time provided such efficient service to the employers that their former costly labor departments have become unnecessary.

The Trend of Unemployment

By Margaret D. Meyer

WIDESPREAD unemployment during the early months of the year was much discussed by Congress, as was indicated in the June issue of this Review.[1] Since Congress adjourned, however, debates about the numbers unemployed throughout the country have somewhat subsided. And possibly because estimates of the numbers out of work have ceased to occupy the front pages of the daily papers, a large part of the populace is content with the theory that increased industrial activity has meant re-employment for those large numbers—whatever they actually were—who swelled the ranks of the unemployed during the early part of the winter.

Compared with the first part of 1928, industrial activity in the spring and early summer had most certainly increased. According to the index of the Federal Reserve Board,[2] industrial production continued in a large volume during April and May and dropped only slightly in June. The index jumped from 99 in December, 1927, to 106 in January, reached 110 in February, stayed at 109 during March, April and May, and dropped to 108 in June. Production of manufactures also rose from 99 in December to 107 in January, 111 in February, stayed at 110 during March, April and May, and dropped to 109 in June. Factory employment, however, according to the Federal Reserve Index, dropped from 89 in December to 88 in January (accompanying the rise in industrial production and production of manufactures of 7 per cent, and 8 per cent respectively), rose again to 89 in February and to 90 in March, but dropped to 89 again in April and May, the index for each of these months being 4 per cent below April and May, 1927, and 7 per cent below April and May, 1926. The May, 1928, factory employment index is 6 per cent less than May, 1925, and 7 per cent less than May, 1924. Employment reached 90 again in June, which is 2 per cent less than June, 1927, and 4 per cent less than June, 1925.

The United States Bureau of Labor Statistics reported an unusual seasonal increase in its manufacturing employment index for the early summer. Both payrolls and employment in June showed an increase over May by 0.1 per cent. It is reported to be the first time in five years that June employment has shown an increase over May and the first time in six years that June payrolls have not decreased. The employment index for June, 1928, however, was 85.6 as compared with 89.1 for June, 1927. The employment index

[1] See *American Labor Legislation Review*, Vol. XVIII, No. 2, June, 1928, pp. 149-152.

[2] Federal Reserve Bulletin, July, 1928, p. 458.

for July, 1928, was 84.7 but rose to 86.0 for August. The August, 1928, index is 1.4 per cent lower than August, 1927.

The decline of employment within New York State has also apparently been checked, according to a report of the New York State Department of Labor. An increase in employment of a fraction of one per cent from May to June marks the first increase for this period since the recovery of business in 1922. The drop of only nine-tenths of one per cent in the employment index from June to July was an unusually small drop for that period. A rise of one per cent was reported for August.

Unemployment among trade union members in 24 cities was 5 per cent less in May than at the beginning of the year, and 3 per cent less in May than in April. A further reduction of 2 per cent occurred in June.

More jobs were reported filled in May by the State Employment Offices in New York State than in any month in 1928,[3] though there was the usual seasonal dullness in the demand for workers at the end of June and during July and August.

The volume of construction performed during June and August reached a point higher than that of any year on record. The total volume of construction registered for the first eight months of 1928 was 2.5 per cent greater than that registered for the corresponding period in 1927. The volume of building contracts awarded in 27 states during July, while being 11 per cent less than the June volume, exceeded the record for July, 1927, by 9.5 per cent.[4]

Indications apparently point to an active business situation[5] with employment, so far as our statistics go, in a more favorable condition than at the beginning of 1928, yet, in general, not comparing so well with the level in previous years. But the statistics available do not by any means tell the whole story. And herein lies the crux of the problem. Have we or have we not a serious unemployment problem at the present time? Has the expansion of certain lines—construction, retailing, personal service, auto repair work, etc., taken care of these large masses of workers who over a long period of years have been steadily released from the factories, the railroads, the mines, and the farms?

We have no adequate facilities available for the collection of such information as will enable us to even approximate an answer

[3] Industrial Bulletin, June, 1928, p. 285.

[4] The Constructor, July, 1928, p. 33.

[5] Though further favorable developments have been regarded by some interests as doubtful due to conditions in the banking and money markets which have caused current high rates of interest and have already increased the cost of doing business.

to our question. We have no comprehensive net-work of public employment offices collecting information concerning the conditions of employment all over the country—and no system of universal unemployment insurance which provides the incentive for unemployed workers to register at the public offices, thus enabling us to make a reliable count.

Before Congress adjourned last May the Senate passed a resolution[6] which provides for an investigation of the causes of unemployment; the continuous collection and interpretation of adequate employment statistics; the organization and extension of systems of federal and state public employment bureaus; the establishment of systems of unemployment insurance; and long range planning of public works. The findings of the investigating committee are to be reported by February 15, 1929.

Two measures, however, the Wagner bill and the Jones bill, which are already before Congress and which are described in other parts of this Review,[7] should be passed without further delay. Any committee investigation in the field of unemployment would be hindered by reason of the lack of machinery for collecting information regarding numbers out of work. The enactment of the Wagner bill, by the facilitation of the establishment of a comprehensive net-work of federal-state offices, would provide the means for the collection of such information. Wise public policy demands immediate consideration of this bill.

The passage by Congress of the other measure, the Jones bill, which has already been reported favorably by the Senate Committee on Commerce, would put into operation part of the program recommended by the President's Unemployment Conference of 1921. Quoting from an editorial appearing in the New York Times, July 25, 1928:

"Dr. Gries, Chief of the Division of Building and Housing of the Department of Commerce, argues that if some such scheme were put into operation it would not only bring about the direct employment of men who might otherwise suffer want or require direct relief, but would also stimulate employment and activity throughout the country in the cement, lumber, steel and coal industries and in railroad transportation. Economists look for a further stimulus to business generally as a result of the increased purchasing power of the men employed. The government would probably get its work done more cheaply, because of the low prices which ordinarily prevail during a depression. At the same time enactment of the bill by Congress would tend to encourage measures looking to the same end on the part of state and local governments."

[6] (S. Res. 219), Introduced by Mr. La Follette.
[7] See p. 274 and p. 273 of this Review.

New Jersey and the Ribnik Case

THE United States Supreme Court on May 28, 1928[1] declared unconstitutional the fee-fixing provision of the New Jersey private employment agency law. The section which was held to be in conflict with the "due process" clause of the Fourteenth Amendment required all fee schedules to be approved by the commissioner of labor.

The case arose over the refusal of Commissioner McBride of the New Jersey Department of Labor to grant a license to the plaintiff on the ground that the fees proposed to be charged were excessive. The New Jersey courts sustained the action of the commissioner but the United States Supreme Court, by a six to three decision, construed the law as conferring "upon the commissioner of labor power to fix the prices which the employment agent shall charge for his services." The court reasoned that an employment agency is essentially a private business; that "the interest of the public in the matter of employment is not different in quality or character from its interest in the other things enumerated," (the druggist, the butcher, the grocer); but that "in none of them is the interest that 'public interest' which the law contemplates as the basis for legislative price control" and that "at least in the absence of a grave emergency, * * * the fixing of prices for food or clothing, of house rental, or of wages to be paid, whether minimum or maximum, is beyond the legislative power." The court concluded that there is "no reason for applying a different rule in the case of legislation controlling prices to be paid for services rendered in securing a place for an employee or an employee for a place."

The court again pointed out that the state has power to require a license and regulate the business of an employment agency. But the extent to which "regulation" may be carried is still in doubt. Some states, for example, fix a registration fee or prohibit such fee before employment is found. Others specifically prohibit dividing fees by the employer and the agency, which of course affects the amount that the agency may eventually earn.

The widespread effect of the Ribnik case is apparent when consideration is given to the fact that according to the brief filed in

[1] Ribnik v. McBride, 48 Sup. Ct. 545.

behalf of the New Jersey Department of Labor approximately thirty states have enacted laws with fee-fixing provisions. Eleven[2] states fix specific fees to be charged; ten[3] states limit fees to a percentage of wages; and eight[4] states, including New Jersey, require the schedule of fees to be approved by a state official. These various methods of limiting fees all fall within the prohibition as laid down by the Supreme Court and are therefore, apparently, rendered inoperative.

Fearing an influx of private agencies of the "fly-by-night" type as a result of the Ribnik decision, the New Jersey legislature promptly enacted a new private employment agency law incorporating therein a provision similar to that which has been in effect in Wisconsin for a number of years. This section provides that "It shall be the duty of the industrial commission, and it shall have power, jurisdiction and authority to issue licenses to employment agents, and to refuse to issue such license whenever, after due investigation, the commission or a majority of the members thereof finds that the character of the applicant makes him unfit to be an employment agent, or when the premises for conducting the business of an employment agent is (are) found upon investigation to be unfit for such use, or whenever, upon investigation by the commission, it is found and determined that the number of licensed employment agents in the community in which the applicant for a permit proposes to operate is sufficient to supply the needs of employers and employees. Any such license granted by the commission may also be revoked by it upon due notice to the holder of said license, and upon due cause shown."

Wisconsin officials report favorably on the operation of this regulation in that state. It remains to be seen after more extensive experience whether or not this method of regulation will adequately curb those evils inherent in the private employment agency business which hitherto states have so largely attempted to control by official supervision of the fees to be charged.

---

[2] Arkansas, Colorado, District of Columbia, Illinois, Kansas, Maine, Missouri, Montana, Texas, Virginia and Wyoming.

[3] Connecticut, Iowa, Michigan, Nebraska, New York, North Carolina, Oklahoma, Oregon, Utah and Rhode Island.

[4] California, Indiana, Minnesota, New Jersey, Ohio, Pennsylvania, South Dakota and Wisconsin.

"How Come?"

New York Herald Tribune by J. N. Darling

"OUT OF THE SAME HATCHING AND THE SAME PEDIGREE"

Roll of Honor of Coal Companies Using Rock Dust to Prevent Coal Dust Explosions

288 Companies in Eighteen States and Canada!

WHEN in December, 1922, after calling attention to the increasing toll of lives in coal mine disasters, the American Association for Labor Legislation opened its present campaign for the adoption of preventive measures, it was able to secure from federal and state official sources the names of only three coal companies in the United States and Canada that were using rock dust to prevent coal dust explosions.

As the campaign has progressed during the past five years, the Association has been informed of the installation of rock-dusting methods by at least 285 additional companies. Such companies should be commended for taking the lead in the adoption of this simple, reasonably inexpensive and effective safeguard against disasters.

The full list of coal companies that have equipped one or more of their mines with the rock dust safeguard, or have begun to install it, appears in this REVIEW, for September, 1927, pp. 217-219. Additions to the list, as of August 1, 1928, are as follows:

ALABAMA—Consolidated Coal Co.

GEORGIA—Durham Coal and Iron Co.

ILLINOIS—Saline County Coal Corporation; Franklin County Coal Co.; Brewerton Coal Co.

INDIANA—Vandalia Coal Co.; Vigo Coal Mining Co.; Horton Coal Co.

OHIO—Ohio and Pennsylvania Coal Co.

OKLAHOMA—Messena Coal Co.; Kali-Inla Coal Co.; Milby and Dow Coal Co.; Pierce Coal Co.; Mullen Coal Co.; Samples Coal Co.; San Bois Coal Co.

PENNSYLVANIA—Shannopin Coal Co.; Brush Creek Coal Mining Co.; Consolidation Coal Co.; H. C. Frick Coke Co.; Heisley Coal Co.; Monessen Coal and Coke Co.; National Mining Co.; Pittsburgh Coal Co.; Youghiogheny and Ohio Coal Co.

WEST VIRGINIA—American Coal Co. of Allegheny County; American Rolling Mill Co.; Ben Franklin Coal Co. of W. Va.; Continental Coal Co.; Cosgrave-Meehan Gas Coal Co.; Cranberry Fuel Co.; Crown Coal Co.; Dragon Coal Co.; Lillybrook Coal Co.; Logan Chilton Coal Co.; Pocahontas Corporation; Stuart Colliery Co.; White Oak Fuel Co.; Wheeling Coal Co.; Morgantown Gas Coal Co.; Houston Collieries Co.; Black Betsey Consolidated Coal Co.; McKell Coal and Coke Co.; Wheeling Steel Corporation; Woodland Coal Co.

WYOMING—Kemmerer Coal Co.; Diamond Coal and Coke Co.; The Colony Coal Co.; Blazon Coal Co.; Owl Creek Coal Co.; Gunn-Quealy Coal Co.; Ideal Coal Co.

Seven More Mine Tragedies!

PROGRAM OF PREVENTION

SINCE the June issue of this REVIEW went to press, there have been seven more "major" coal mine explosions. Eleven such disasters have occurred thus far in 1928, **killing a total of 308 miners.**

In May, four explosions killed 230 men. One at Mather, Pa., on May 19, killed 195. On May 22, at Harlan, Ky., 8 were killed, and on the same day 17 were killed at Yukon, W. Va. In an anthracite mine at Parsons, Pa., 10 men were killed on May 25. On June 20, an explosion at Morgantown, W. Va., killed 6 miners. Two explosions in Pennsylvania killed 5 at Johnstown on Aug. 9, and 13 at Coalport on Aug. 15.

The death toll resulting from coal dust explosions would have been vastly greater if it were not for the progress made in rock dusting. At least 730 miners in 1927 alone owe their lives to rock dust.

In the past six and two-thirds years 79 "major" coal mine explosions have caused the death of 2,184 miners.

In 1928, 11 explosions killed 308 men (January-August).
In 1927, 9 explosions killed 162 men.
In 1926, 16 explosions killed 349 men.
In 1925, 10 explosions killed 237 men.
In 1924, 10 explosions killed 459 men.
In 1923, 5 explosions killed 265 men.
In 1922, 11 explosions killed 264 men.

That the record for the past three years is not quite as shocking as that for 1924 is doubtless due in a measure to the remarkable, though belated activity of coal companies, beginning in 1924, in installing the rock dust safeguard in their bituminous mines—activity which has continued in 1928 until more than 288 mine companies are now rock dusting. However, every year of delay by the states in adopting laws to require rock dusting of all bituminous mines means the tragic killing of hundreds of men.

Scores of editors and writers have in recent months cooperated in the campaign for the prevention of needless coal mine accidents by demanding that state legislatures promptly enact laws to require the rock dusting of bituminous mines to prevent coal dust explosions.

How much longer shall these killings continue? ("The great explosions should not be considered to be normal occupational accidents," says the director of the federal Bureau of Mines.) When will the public insist upon removing for all time the dreaded spectre of violent death that stalks through the mines? These questions—which must here again be raised—have been asked in every issue of this REVIEW since December, 1922.

Mine bureaus have existed for many years. Accident compensation laws have provided at least partial relief for those

left dependent. **But safety standards are still inadequate. In ten years we have killed more than 25,000 coal miners!** The United States Bureau of Mines has shown that many of the worst hazards of mining can be eliminated. The director of the Bureau has declared that "explosions can and must be prevented." Results, however, depend upon local and state action.

In order to make safety work in the mines more effective the American Association for Labor Legislation is urging the adoption of a program for strengthening protective legislation, which includes—

1. The adoption of uniform legal minimum standards of safety;

2. The use underground of no explosive that is not after scientific investigation numbered among the "permissibles;" the strict limitation of "shooting off the solid;" and the use of shale or approved rock dust to check the spread of coal dust explosions;

3. Reward careful employers and penalize the less scrupulous, by the universal adoption of schedule rating for insurance under accident compensation laws, with a further graduated penalty for cases of willful failure to put into effect legal safety regulations;

4. An adequate mine inspection staff selected upon a merit basis of training and experience, fairly paid, for reasonably long tenure of office and protected from partisan interference whether political or industrial;

5. Greater public authority, federal and state, to procure and disseminate information, and to establish and maintain on a uniform basis reasonable minimum standards of safety.

The Association's program of prevention of needless coal mine disasters—discussed more fully in this REVIEW for March, 1924—has aroused widespread interest. It has been put forward during the past three and a half years with the active cooperation of the press, and after consultation with mine operators and engineers, representatives of the miners' organizations, state and federal mine inspectors, and an examination of published records.

As a result of the Castle Gate explosion in March, 1924, Utah promptly pointed the way by adopting the most comprehensive coal mine safety code in America, including the required use of rock dust. Five additional states—Pennsylvania, Wyoming and West Virginia in 1925, and Indiana and Ohio in 1927—have already enacted laws providing for the rock dusting of bituminous mines.

Why should there be further delay in the other nineteen bituminous states in taking the necessary preventive measures? Why continue NEEDLESSLY to destroy property in an essential industry and sacrifice additional hundreds of precious human lives?

New Editorial Comment on Rock Dusting

(Supplementary to Earlier Extracts in this Review)

CLARKSBURG (W. VA.) TELEGRAM: "Those who investigated the recent mine explosion at Mather, Pennsylvania, which took a toll of 195 lives, recommended 'compulsory rock dusting of gaseous or dry bituminous mines within the commonwealth.' * * * If mine operators will not adopt this known preventive method, then it is certainly the duty of states to enact legislation compelling it."

ASBURY PARK (N. J.) PRESS: "Recently within the period of a week 238 men lost their lives in mine explosions. With regard to these accidents, the American Association for Labor Legislation says that 'mine disasters due to coal dust explosions are preventable,' and that the way to prevent them is to employ the rock-dusting process. This treatment is recommended by the United States Bureau of Mines. Six states have laws requiring rock-dusting. * * * If all mining states will not act—if they will not adopt legislation to make rock-dusting compulsory—then Congress will be justified in taking up the matter. It should not be deterred by a regard for states' rights. Neglect is not a right."

ALBUQUERQUE (N. M.) JOURNAL: "When such a simple and comparatively inexpensive method of averting disasters in the mines is known it should not be left to the more enlightened and humane mine owners to employ it but its use should be made compulsory."

NASHVILLE (TENN.) TENNESSEEAN: "We do not believe that the agencies of government have done all that ought to have been done in requiring the installation of the most modern safety devices for the protection of those who work in the mines. This is a subject that may well challenge the attention and the most earnest efforts of law-makers and government officials in every state where coal is mined."

PHILADELPHIA (PA.) RECORD: "The beneficent operation of the Workmen's Compensation law can be seen in the dispatch from Mather, which states that about $800,000 will be paid to the families of the miners killed in the terrible disaster there. This gives about $4,000 for each death."

HAVERMILL (MASS.) GAZETTE: "The report that scores of men have been killed by an explosion in a mine is no longer news that gives to the average reader the thrill of horror at a terrible tragedy that he receives when informed of the death of one transatlantic aviator. * * * Since commonness and failure to dramatize multiple tragedy prevent emotional realization of their import, we must seek this understanding by applying to these menacing conditions the measure of economic standards. What we cannot learn and do by inspiration we must accomplish by the methods of the systematic plodder."

BOSTON (MASS.) HERALD: "A fight that cost more than a hundred lives would have been a sizable battle in our Revolution, it would have counted for something even in the Civil War. This mine explosion cost more American lives than did the torpedoing of the Lusitania. This is a challenge which civilization cannot afford to ignore."

DANBURY (CONN.) TIMES: "Coal is a Moloch taking a human sacrifice far too large."

LOWELL (MASS.) LEADER: "It is simply imperative that nothing should be neglected that will materially lessen the danger."

HOUSTON (TEX.) POST DISPATCH: "Another mine disaster passes into history. In a few days it will be forgotten by the general public. * * * Mine disasters are so frequent, you know, it is difficult for the average person to remember which one happened last, or where."

WILKES-BARRE (PA.) RECORD: "Undoubtedly many distressing accidents are due to non-preventable causes, but according to the reports in official papers too many are due to causes that could have been avoided. It behooves all parties to see to it that human life in the mines is carefully guarded."

COLUMBUS (O.) STATE JOURNAL: "The lives of miners are snuffed out singly at times, then by scores and recently by hundreds. * * * These accidents, so costly in life, so destructive of property, challenge the genius of the scientific men of the nation."

FLINT (MICH.) JOURNAL: "The public has come to consider coal mining accidents almost as a matter of course, but such an attitude is wrong. They can and should be prevented."

NEW BRITAIN (CONN.) HERALD: "How often has the nation read of such mine horrors, felt sympathy for the victims and the women and children left without breadwinners, and then has conveniently forgotten all about it in a few weeks."

MEMPHIS (TENN.) COM'L. APPEAL: "The mine owners are the ones most vitally interested in such safeguards, but if they are unable, either through lack of funds or tightness of purse, to provide adequate protection, the states should enact laws and render aid in enforcing more rigid rules for safety."

Rock-Dusting Must Be Adequate

"ROCK-DUSTING to be effective must be adequate not only in the tracked roadways but in the other passageways also. * * * One of the reasons for the inefficacy of (water) sprinkling, a practice once so highly commended, came from the fact that only one heading or two in a group of many headings could be sprinkled, and the explosion showed a preference to travel the roadways that had not been so treated. * * * One can find operators almost everywhere who are positively proud of their rock-dusting, and yet they have not done as well as Mather. Fortunately, they have not struck the concatenation of circumstances that made that mine a hecatomb. Mather has learned its lesson, and it is to be hoped that other mines will profit from the record."—*Coal Age, July,* 1928.

TOILER, toiler of the mine,
Braving Pluto's inmost shrine,
Delving dark in depths of earth
As some god of mystic birth,
Wresting from deep-hidden pyres
Food for man's insatiate fires,
Toiler, toiler, dost thou see
In thy toil Divinity? • •

From "The Divinity of Toil,"
by
Thorton Oakley,
In the *American Federationist*

The Toll of Mine Accidents

NASHVILLE (TENN.) BANNER: "Though the incidents themselves are fearful, it is, perhaps, even more depressing to be obliged to note that the general public has apparently taken these tragedies as nothing more or less than what is to be expected in the due course of events. For years the pages of the newspapers have carried reports of such so-called accidents, and the people of the country and their official representatives have apparently come to think that they are inevitable and regrettable. * * * There is every reason to believe that the exercise of proper care would obviate much of the terrific toll that is now being taken year after year in the United States. * * * Every possible precaution against mine accidents should be taken and nothing left undone to safeguard the lives of mine workers."

Newer Interpretations of the Sherman Act

By John A. Fitch
Author, "Causes of Industrial Unrest"

(Editor's Note:) Mr. Fitch, as chairman of the meeting held at Washington, D. C., on December 27, 1927, said: "I suppose that some who are not members wonder why discussion of the Sherman Act is interjected into a series of meetings under the auspices of the American Association for Labor Legislation. The reason is that the Sherman Act has come to be a piece of labor legislation, whatever it may have been in the past. * * * [Furthermore,] this Association is more than an organization for the promotion of specific pieces of labor legislation; it is also an association for the study of labor problems." The papers which follow Mr. Fitch's introductory statement were then presented.)

THE Sherman Anti-trust Act was passed by Congress at a time when the "Trust Problem" was an outstanding political issue. Debates in Congress and other statements concerning its purpose indicate that Congress intended, through the passage of the act, to suppress corporate monopolies, and was not concerned over the development of labor organizations. Nevertheless, one of the outstanding decisions of the United States Supreme Court, interpreting the Sherman Act, is that popularly known as the Danbury Hatters case. In this decision it was established that the Act covers the activities of unions as well as those of corporations, and numerous later decisions have been in conformity with this concept.

In 1914 Congress passed the Clayton Act supplementing the existing anti-trust laws, and included certain sections dealing with labor organizations. These provisions had been urged by the unions in the belief that they would remove the handicaps imposed upon them by the Sherman Act as interpreted by the Supreme Court. That this belief was ill-founded was made evident by decisions of the Court interpreting the Clayton Act and by 1921 it had become clear that no substantial change in the legal status of unions had been accomplished by the legislation of 1914.

The newer interpretations of the Sherman Act suggested by the general title to the series of papers that follow began approximately in 1924 with the Coronado case and include certain injunction cases arising out of the bituminous coal strike of 1927-28. These later decisions seem to indicate a new trend of thought in the court. In the Danbury Hatters case a nation-wide boycott was held to be a violation of the Sherman Act. Not until the more recent cases, however, had the act been interpreted as a legal barrier to strikes.

The two decisions involving the Coronado Coal Company in Arkansas seem to imply that if a strike succeeds in stopping the production of a substantial amount of goods intended for interstate commerce, it is illegal. Injunctions based on this theory have since been granted by federal courts, citing the Coronado cases as authority. Equally significant is the decision in the Bedford Cut Stone case, which held it to be a violation of the anti-trust act for members of a union engaged in controversy with a producer to refuse to install his products.

These decisions naturally cause grave concern among those who recognize the importance of labor organizations. They constitute a potential threat to the very existence of unions. It is too early to judge of their full effects but it is of great importance that they receive the careful attention of students. The different points of view expressed in the papers that follow indicate some of the points at issue. What is a charter of liberty to Mr. Merritt is a necessary evil to Professor Scharfman and a thing of grave concern to Mr. Joseph, who believes the judges need better training, and to Mr. Hunt, who thinks the law should be amended so as to give unions equal rights with corporations. Mr. Witte sees danger to established respect for law and order arising from the decisions, and Mr. Frey, speaking of injunctions and not especially of the Sherman Act, sees usurpation of rights.

Major Party Platforms on Injunctions

(EDITOR'S NOTE: The following excerpts are from the major party platforms of 1928.)

I. Democratic National Platform

"WE recognize that legislative and other investigations have shown the existence of grave abuse in the issuance of injunctions in labor disputes.

"Injunctions should not be granted in labor disputes except upon proof of threatened irreparable injury, and after notice and hearing; and the injunction should be confined to those which do directly threaten irreparable injury.

"The expressed purpose of representatives of capital, labor and the bar to devise a plan for the elimination of the present evils with respect to injunctions must be supported and legislation designed to accomplish these ends formulated and passed."

II. Republican National Platform

"The party favors freedom in wage contracts, the right of collective bargaining by free and responsible agents of their own choosing, which develops and maintains that purposeful cooperation which gains its chief incentive through voluntary agreement. We believe that injunctions in labor disputes have in some instances been abused and have given rise to a serious question for legislation."

The Sherman Act—A Bulwark of Freedom

By Walter Gordon Merritt
The League for Industrial Rights

(Editor's Note: Mr. Merritt, as an attorney largely identified with business interests, believes that the anti-trust laws as applied to labor as well as to capital "can be called by no better term than 'Liberty Laws,'" and that they represent an extension to our economic life of the principles announced in the Declaration of Independence. He cites general prosperity in this country, as compared with others, notably England, where no such laws obtain, as a proof of their desirability. Although he concedes that the anti-trust laws in some instances may have interfered with legitimate activities, and might in some details be improved, he warns against those "false prophets" who advocate their repeal.)

IN discussing questions concerning fundamental industrial institutions, we should first of all recognize that in this country we live in an era of great prosperity and in a spirit of good will between capital and labor such as has never before been experienced in the entire history of the world. The cooperation which has been developed transcends anything which we would have predicted fifteen or twenty years ago. Better labor organizations have worked great good for our country and have brought the wages of mechanics far above those of white-collar workers. Capital itself enjoys great prosperity in this country. These conditions have obtained under our present anti-trust laws and other laws restricting the conduct of both capital and labor.

In Great Britain, where anti-trust laws have not been recognized in the same degree and where individual rights of employees and employers do not receive the same amount of protection as in this country, the condition is not so favorable. In Great Britain the feeling of good will and cooperation between employers and employees is not so cordial and, of course, prosperity, the wages of workers, and the earnings of capital are not so great. I am not attributing this prosperity and good will solely to any industrial institution, but I call attention to the situation as carrying the presumption that our industrial institutions are good and have brought to us many returns.

Among those industrial institutions I look upon the anti-trust laws as important. They are not in my mind like an ordinary law of a transitory nature. We have worked under them for over thirty years without any change as to their substantive character or any radical modification as to what shall be unlawful and what shall be lawful. We look upon them in their relation to social welfare as a whole, as to which all must recognize that large combinations of employers and large combinations of employees enjoy a power for social ill and good which far transcends the power of any individual. Organizations and institutions, actuated as they are by selfish motives, are not always capable of that self-restraint which fully recognizes a public good. Colonel Donovan, when speaking for the Department of Justice, called these anti-trust laws a philosophy of human relations, and I think that is correct. You cannot wipe them out or change them without reconstructing your social philosophy or abandoning in the commercial field those principles in the Declaration of Independence which we thought so good in our political field. Under the anti-trust laws the first and basic thought is that competition must prevail and that competition is the public's protection against unfair exactions on the part of labor or capital. In a sense we say that if the public will protect the liberty of the employer and employee to work so he may compete with others in a similar position, then that liberty will protect the public.

These combinations if entirely released from restrictions of that character do not always stop at the bounds of justice. It is not in the nature of things that any group of human beings should reach up to the peg and put on its own bridle.

Anti-trust laws are in a sense a negative law which aims to assure that certain rules of the game in industry shall prevail. They are in a sense the law and order of industry. The Government watches the people in the arena of the economic battle and says: As long as you don't interfere with the economic laws of competition we won't interfere with you. It goes further and says: No private individual shall enter the arena and interfere with operations of these laws. When you approach this question it must be apparent that if we abandon this competitive regulation, which is now the protection of the public, we will accept another regulation to protect the public from unfair exactions. And that other regulation will be a greater interference with human freedom. We cannot trust to industry if given complete control to do whatever it pleases in the exercise of

its economic power. Expressing myself as I do, so largely in the interest of employers, I recognize that employers do not want drastic regulation of prices or any other form of governmental regulation which will interfere through political processes with the conduct of their affairs, and speaking from the knowledge of literature of the labor unions, I think that I discern the same thought on their behalf. I know that the late Samuel Gompers always felt that the law should not interfere with unions.

The change in the situation with respect to railroads and the present encouragement of railroad consolidations despite the anti-trust laws, is often used as an argument against applying the anti-trust laws to labor. However, railroads are regulated as to rates, and therefore there is no such need of applying anti-trust laws to them. Neither labor nor capital is regulated as to prices or wages in private industry. Thus we have a well marked distinction between a regulated activity of a public nature where the anti-trust laws are not necessary and private industry where competition based on liberty is the regulator.

If you trace the development of American law, and particularly statutory law, in its effort to create a condition where the liberty of the trader is at all times protected, where every man who goes to the bat has a chance to make a home run, you will appreciate the consistency of the courts of this nation with respect to matters of this kind and the part the anti-trust laws have played.

I believe that it was in 1887 when we passed a law creating our Interstate Commerce Commission, forbidding rebates in connection with railroads. It was to secure fair play to every one in industry in the transportation of his products so that he might have an equal chance with competitors in sending his products to the markets of the nation. Then came the anti-trust law in 1890, which, as was said in the Hatters[1] case, and repeated in many decisions, was designed to protect the liberty of the trader to engage in interstate commerce and to make it possible for every man and woman in commercial and industrial life to serve the public without encountering unfair restrictions and obstructions in the course of trade. Long after, we passed the Federal Reserve law, designed to give encouragement to the individual operator by making it possible for him to secure adequate assistance.

[1] Loewe *v.* Lawler, 208 U. S. 274.

In 1914 we passed the Federal Trade Commission Act forbidding unfair methods of competition. There you have the well-rounded picture of an effort to protect each individual so that no one should meet with artificial obstructions in his business or occupational career.

We have many decisions of late which seem helpful in the construction of the anti-trust law. We have decisions liberalizing the law in respect to operations of capital, and decisions safeguarding the rights of labor. The general conclusion which is reached now as the result of these decisions is that the right to organize remains secure, whether it be the right of employers or employees, and the most fundamental thing which the law denounces is interference with industrial liberty. So I have the temerity, contrary to the general sense of our people, to call these laws liberty laws, because they are a real bulwark leaving every man and every woman free to enter the industrial arena, without fear of obstruction or interference, and win what they can according to their talents and diligence.

I was interested in examining the reports of the Department of Justice as to the enforcement of these laws against labor and capital, and I found, so far as injunction suits are concerned, 5 per cent of them have been directed against labor and 95 per cent against capital.

I am not in favor of exempting any class from any law. It is not my sense of logic or of justice or of the history of the anti-trust law that it does or should exempt labor combinations. Let us consider for a moment the difficulty of doing this.

I had a case in New York, where there was a combination against the use of a certain plumbing device because it saved labor and materials. The pipe manufacturers and contractors, together with the unions, combined to prevent the use of that device, which had been passed by the Board of Standards and Appeals and was in the interest of the public, by labor's refusing to work on a building where that device was used. The pipe manufacturers were interested because if they could prevent the use of that device they could sell more pipe, the contractors were interested because it meant more money to them, and labor was interested because it could sell more labor. So we had capital and labor in the same boat, as it often finds itself, under competitive conditions, combining against the public's interests. If under these conditions it was lawful for labor to do that and unlawful for capital, what an extraordinary position you would

have—a group of men engaged in the same object and purpose, a part of them being violators of the law and the other part receiving the sanction of the law!

If I were to make any contribution of real value in this paper I would suggest that the proper approach is the clinical method. The time is past, it seems to me, when in glittering generalities I should uphold anti-trust laws and someone else should condemn them. The time has come when we should ask: What is it you are stopped from doing which you think you should be allowed to do? Give us a concrete illustration, and then you and I and others can sit down and ponder over it and see if we believe it is in the interest of social welfare that it should be done. My observation of most critics of anti-trust laws is that they wish to do things which are anti-social or undesirable.

For every illustration which can be given me of an abuse of power in the issuance of injunctions, I can give an illustration of an abuse of power in the issuance of attachments or any other legal process. As far as my observation is concerned, the courts have been as unerring in the issuance of injunctions as with any other processes. Of course they make mistakes, but the question for us will be whether under the common run of affairs there is something which should be changed, and if so, what it is. The question is, what does labor want to do, or what does a big combination of capital want to do which these laws stop them from doing. Answer that question and we can face the question intelligently. Speaking from the point of view of capital, as far as I am concerned I have not found many things which capital wanted to do and the anti-trust laws forbade them from doing which I think would be in the public's interest.

I do not contend that the anti-trust laws have never interfered with legitimate activities or that there may not be some details in which they might further be improved, but I warn against the preachings of these false prophets, who speak unqualified condemnation of these laws and advocate their complete repeal. It is altogether too easy for those who find legal barriers between them and their objectives, to become impatient of the restraint and to look upon such laws as an unwarranted encroachment on liberty. So it is that some business men little realize that, by and large, the anti-trust laws protect, more than they curtail liberty, and that in truth they have become a real citadel of liberty.

To one like myself who has been constantly called by business interests to take up the legal defense of industrial liberty as against the oppression of the group, the anti-trust laws can be called by no better term than "Liberty Laws."

The "Liberty Laws," as I call them, forbidding unfair commercial aggression and organized efforts to deprive individuals of their commercial rights, are an important part of our efforts to maintain a free country. In the United States it may be said not only that our homes are our castles, guarded against intruders, but that our industrial careers are likewise a sacred possession, to build with according to the measure of the talents with which our Creator endowed us.

The liberty of the trader is the end sought. The Court found that the combination in the Hatters[2] case, "aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes." It was thus early made clear that efforts on the part of any group to interfere with "liberty of the trader" and to prevent a person from engaging in business except on conditions which some group dictates constituted a violation of the Sherman Anti-Trust Law. Laws of this character constitute the rules of the game for fair play and honest rivalry. The competition which they aim to preserve is not the use of oppressive means to vanquish competitors, but the use or fair means which win by service. To quote from an opinion of the Supreme Court of Massachusetts, "the trader is not a free lance. Fight he may; but as a soldier, not a guerrilla."

---

[2] Loewe *v.* Lawler, *Supra.*

The Sherman Act—A Menace to Freedom

By Charles M. Joseph
Lecturer, New School for Social Research

(Editor's Note: Mr. Joseph, who is a New York attorney with personal experience in labor cases, discusses the labor decisions involving an interpretation of the anti-trust laws as based on sociological rather than legalistic reasons, and as being premised, at least by implication, on a point of view which is blind to the legitimate claims of labor. His solution is that labor should apply itself to the task of training judges who will understand labor. He adopts the minority opinion of Mr. Justice Brandeis that the restraint now imposed on labor "reminds of involuntary servitude.")

THE United States Supreme Court's decisions within the year 1927 involving application of the anti-trust laws to labor may well give labor pause or thought. Is the situation serious? Let me quote from the dissenting opinion of Mr. Justice Brandeis in the latest, perhaps most careful, far-reaching decision into which labor has yet been placed. Mr. Justice Brandeis says: "If on the undisputed facts of this case refusal to work can be enjoined, Congress created by the Sherman law and the Clayton act an instrument for imposing restraint upon labor which reminds of involuntary servitude."

That is the import of the latest decision, decided in April, 1927, and known as the Bedford Stone Co. against Journeymen Stone Cutters' Association (274 U. S. 37), overruling the Federal District Court of Indiana and the U. S. Circuit Court of Appeals. Here was a case involving no breach of contract nor any procurement of breach of contract, no attempted violence, intimidation, threat, no fraud or deceit—I might also say and take the risk of contradiction, no boycott, that is to say, no secondary boycott. Here was merely a refusal to work in loyalty to that provision of the constitution of the general union which is worded as follows: "No member of this association shall cut, carve or fit any material that has been cut by men working in opposition to this association" (meaning the general union). The general union was composed of about 5,000 members scattered throughout the United States and Canada, with 150 locals and an average membership in each local of 33. The Bedford Stone Co. involved an investment of six

million dollars, annual sales of about fifteen millions, and handled more than 70 per cent of all the stone cut in the country. The Bedford Company was not only organized in a local employers' association but in a national employers' association, known as the International Cut Stone Co., a quarry association. The Bedford Company declared a lockout, which followed a strike, and had set up a so-called independent union, the type that is involved in the Interborough Rapid Transit situation in New York. The Supreme Court held that it was necessary for each member of the general union to wage a separate, single battle with his employer, organized not only locally but nationally. However, the Supreme Court assumes no responsibility for this result. It says, in effect: "We are forced to this conclusion by the law of the land, which is our Master and God, the Sherman Anti-Trust Law." It then adds, with subtle irony, "as amended by the Clayton Act."

Is this the law, the pronouncement of Congress? Does the Constitution of this country make this result inevitable? Does this represent the attitude of the public in a prohibition upon labor which, according to Mr. Justice Brandeis, reminds of involuntary servitude? The Sherman Act was passed in 1890, at the high tide of unprecedented monopoly and trust developments. The question soon arose, however, whether labor was meant to be included within the provisions of the law. The answer was, No. Senator Sherman inserted a provision exempting labor. However, objection was raised and the bill was referred back to the committee, from whence it was again issued minus the exempting provision, with its language somewhat altered. It then read in the form it was passed—Section 1 of the Sherman Act reading in part as follows: "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal * * *."

The important phrase for labor is that part which refers to conspiracy in restraint of trade. A certain student reads hidden intention in that phrase. Congress did not say, conspiracy that reduces trade or affects trade; it said, conspiracy in restraint of trade. The phrase is one of art with a special history and tradition of common law. Therefore, when Congress says, conspiracy in restraint of trade it means to apply the common law to interstate commerce. Ergo, labor cannot claim exemption. Curiously enough, labor never complained of this inter-

pretation of the Sherman Act. Labor does complain, however, that the courts are bad historians when it has been to labor's disadvantage. Labor further complains that the most effective instances of the enforcement of the Sherman Act have been in those cases where labor was brought within its terms. Labor also complains that the Clayton Act, which declared a policy, as Mr. Justice Stone in his opinion in the Bedford case stated, to be favorable to labor, has been interpreted against labor.

In regard to the Clayton Act, it should be noted that the combined Judiciary Committee that presented this Act declared that it was its purpose to exempt labor from the provisions of the anti-trust laws and to provide labor with a complete bill of rights in proceedings in the equity courts. However, we know its subsequent history. We know that the Clayton Act was declared to be wholly inapplicable in both the Duplex Printing case (254 U. S. 443) and the Bedford Cut Stone case. Is the answer that the courts, contrary to the expressions of Congress, have seen fit to direct the law into other ancient channels? Labor would be less disposed to complain if the courts frankly came to the conclusion that labor's interest in the preservation of its bargaining power was of less social value than the interest of capital to place scab products in the hands of third persons, unmolested by labor.

The Sherman Act was soon found to be too broad in its terms. All competitive action leads to a reduction in trade. In order to avoid the condemnation of all trade among the states, the Supreme Court found it necessary in the Standard Oil case to make illegal only those monopolies, or combinations, or conspiracies that not only were in restraint of trade but which were unreasonably in restraint of trade. We have this, then, that the acts of labor must not only be such as to restrict interstate commerce but they must be such as can be characterized as unreasonable within the meaning and intention of the Sherman Act and the Clayton Act. Were the acts of the members of the general union in the Bedford case unreasonable within the intention of these acts? What is the test of unreasonableness or reasonableness? Surely the Sherman Act gives none. Nor, indeed, does the Supreme Court, that laid down the test of reasonableness in these cases. The failure of the Sherman Act to lay down a standard of reasonableness has thrown the courts back upon the only source open to the courts—the common law, or interpretations under legal statutes which are applicable.

Has the Supreme Court examined the common law to arrive at those criteria by which they could measure reasonableness? Mr. Justice Sutherland, in his prevailing opinion in the Bedford case, relying upon the earlier Duplex case, stated that he was not concerned with the conflict of interest involved in that case nor with any possible defense under the common law of justification for the acts of labor. Turning to the Duplex case, we find a like refusal on the part of Justice Pitney to examine the common law in order to arrive at a standard of reasonableness. Are we fooled by this jugglery, which consists of putting a meaning into the Sherman Act which is not there, and then restricting it with an air of discovery? The Supreme Court has consistently refused to examine the common law and to balance the conflict of interests involved between capital, on the one hand, and labor on the other. Indeed, in the one case in which the Supreme Court recognized the existence of such a thing as the conflict of interests, it refused to consider it, and regarded it as beside the point.

Is the answer that the judges have made use of attitudes and feelings which they have not expressed? Is it their attitude that the most important thing about a person is his philosophy? The judges are primarily human and are giving effect to the social, economic, moral, and sociological attitudes when applying legal abstractions.

Is this then the underlying difference between Holmes, Brandeis and Stone, on the one hand, and Sutherland, Pitney and Taft on the other? Having a different social or philosophical point of view, they interpret facts differently and therefore arrive at different conclusions, bringing different ingredients to bear upon the difference of law that governs them, extracting the results of that different flavor. The Sherman Act has not been interpreted naturally by the Bedford case or by the Duplex case. The Bedford case involves constant application of those values placed upon the labor movements by present day courts and judges.

We seem now to be worse off than ever. Had we not always supposed that judges interpret the law and Congress makes the law? We never supposed any such thing. Even if we did, in our admiration of the immaculate separation of powers, we soon found otherwise. Judges make law—that is certain. It is also certain that no Congress, at least in the realm of trust legislation, can possibly pass a law precise enough in its terms to take care of every

case that arises. The work of the courts will always be necessary: courts will always make law in the process and also apart from the process of interpretation. To my mind, labor has then a two-fold task, not only to influence and train Congress in advance of legislation, but to influence and train judges and courts in advance of judicial interpretation and application. Capital has reached the courts and Congress as well—why not labor? Judges who do not appreciate or understand labor and the labor movement, judges who do not understand that deep and intense searching for a developing fullness of life that classifies the class of workers of this country, are no good to labor. Labor does not ask agreements; labor asks understanding.

However, let us not be too harsh upon the courts. Even if it is true or can be said that there is some obligation on the part of courts to understand labor, there is a greater obligation upon labor to bring understanding to the courts. How labor is to bring up its potential judges is not for me to state at this time, if indeed I could. I offer this not as a suggestion of the moment; it will not remove the pressure of the anti-trust laws upon labor's throat. The courts have spoken; only Congress can remove the effect of their decisions. Assuming that accomplished, however, I caution labor to look even further. Labor must present all of its facts to the courts and to Congress, and must seriously enter upon the business of facts, figures and statistics. In all of this it will not do for the public to take the position of a disinterested, irritated outsider: the public is vitally concerned. Certainly the public is interested in industrial peace and cooperation. It must be intelligent enough to realize, however, that this is only possible in a country that achieves a fair measure of justice towards its workers, based upon present-day needs. The public can ill afford to watch a growing feeling of contempt for courts that concede the right of labor to organize for its protection but that too readily enjoin those activities by which alone labor can make its organization effective. Labor must know whether it can count upon the public to use its influence to remove a prohibition upon labor never within the slightest contemplation of the Congress that passed the Sherman Act, and which virtually paralyzes labor activity.

The Double Standard in Applying the Sherman Act

By John P. Frey
American Federation of Labor

(Editor's Note: Mr. Frey is secretary-treasurer of the Metal Trades Department of the American Federation of Labor. As such his views may be regarded as indicative of those of organized labor. It is Mr. Frey's belief that the courts, probably unconsciously, have established class distinctions in issuing injunctions restraining employees from organizing against their employers, but denying injunctions restraining employers from organizing to wipe out business competitors. Mr. Frey views with dismay the growth of the equity power of the courts to issue injunctions, in the exercise of their discretion, and to assume to themselves punitive powers, without a jury trial or other customary criminal procedure. He challenges any one to point out to him the specific authority for the exercise of these powers, and quotes with manifest approval one of the old Lord Chancellors who stated that "The discretion of a judge is the law of tyrants.")

THE difficulty in discussing the results of the Sherman anti-trust law is that we begin with a very modern condition, and may overlook going to the roots of the problem, which are not found altogether in this country. No intelligent or well-balanced discussion of the Sherman anti-trust law and the Clayton amendments, so far as labor is affected, can be carried on without going a little further afield than the law itself and the American courts.

The Sherman anti-trust law was enacted as the result of a growing fear on the part of Americans who saw in the growth of large corporations a power developing which threatened their liberties and which threatened the right of the average business man to carry on his industry in his own way.

Labor became interested in that law because it believed that unless a provision was made which exempted labor organizations, labor, because of its historic experience in this country and Europe, would be held to be engaged in illegal conspiracy every time workmen organized for the purpose of protecting their industrial condition. Thus, Senator Sherman added a paragraph which would have exempted trade unions from his act. Senator Hoar of Massachusetts made a speech in the Senate in which he pointed out clearly and logically the reason why the law could not be made to apply to trade unions.

The Sherman anti-trust law seemed to be the fertilizer for the development of larger corporations than the country ever witnessed before. The only practical result of the law, so far as regulating that condition which the American business man and the American public feared, was the "rule of reason" interpretation placed upon it by the United States Supreme Court when it dissolved the Standard Oil Corporation and made the dissolution more profitable for the same interests who controlled the industry than it had been before. It was because the Sherman anti-trust law was being interpreted by the courts in a manner which seemed to make it impossible for the American workman to enjoy the same rights and opportunities as the American employer that the American Federation of Labor became interested in having the law amended, and eventually the Clayton amendments were enacted. Labor believed that it had secured the measure of protection that it was entitled to. Since the passage of the Clayton amendments labor has discovered that it secured as much protection from the Clayton amendments as it had secured from the efforts of Senator Sherman and Senator Hoar.

There have been three tremendous changes taking place in our country within the last thirty or forty years, changes which very materially affect not only the average citizen's standard of living, but which are also vitally affecting the development and application of our American institutions. One of these changes has been the enormous increase in the size of our industrial and our financial corporations. Probably no country, at any time in the world's history, has witnessed such a development of commercial, financial and industrial institutions as our own in the last twenty-five years or so.

With this there has come another revolution which perhaps will have almost as great effect upon our civilization as the change which took place when power and machinery first supplanted hand labor a hundred and fifty years ago. The American workmen have increased their per capita production 50 per cent in the last twenty-five years, or, in other words, the average man working for wages is producing 50 per cent more wealth than he was twenty-five years ago. That brings a tremendous problem into the whole equation.

Finally, during this period, while these tremendous changes have been taking place, our courts have assumed an authority

which they had never assumed before. I have tried to discover where the courts sitting in equity derive their extended authority. I can find no such authority in the Constitution. I can find none in the acts of Congress or in the acts of the several states. I have gone to the leading legal authorities, the best known professors of law in our great universities, and I have asked them to help me and point out something in the Constitution or in the law which gave the courts of equity the authority which they are now exercising in connection with industrial disputes, and they have been unable to show me any law or section of the Constitution which gives that power, outside of the simple statement in that portion of the Constitution dealing with the judiciary which gives to the Supreme Court of the United States equity power.

One of the results of this use of equity power by the judges has been their participation in this very question which is being considered, the Sherman anti-trust law and the growth of corporations and trade unions. We find, beginning with a simple case in 1888, that our equity courts, state and federal, have taken advance ground in the jurisdiction of equity where labor has been involved. They believed in the beginning that they were justified in restraining the commission of illegal acts, and while that authority was questioned at that time, a judge would restrain a body of workmen from committing what he held to be an illegal act. This assisted employers' attorneys in getting to some other judge sitting in equity to take another step. Another precedent was established. Little by little our judges sitting in equity have restrained organized workmen from any activity intended to assist them in protecting their own rights.

Now, the matter which is of serious importance is this, that unconsciously, in all probability, many of these injunctions issued against labor have established class distinctions. It is hardly necessary to remind you that if a court establishes any class distinction, to that extent American institutions and American liberty have been invaded or given a new character. It would be interesting perhaps, but of little immediate value, to quote the many, many cases which indicate action of equity courts in labor cases which creates class distinction. Let us take one example.[1] The business men in South Dakota organized to protect themselves from the competition of

[1] Montgomery Ward & Co. *v.* South Dakota Retail Merchants' Ass'n, 150 Fed. 413.

catalogue houses. They formed an organization, as workmen do, to protect their interests. They elected their secretary and established their official organ. They had their secretary write to manufacturers and jobbers who were selling material to catalogue houses, calling attention to the fact that the catalogue houses were destroying the retailers' business, and intimated that if they preferred to sell to the catalogue houses, well and good, but that the members of the South Dakota Retail Dealers' Association did not care to buy from them. They published a list of the manufacturers and jobbers who preferred to do business with the catalogue houses.

Montgomery Ward & Company became interested, employed most competent counsel, and went into the federal courts for an injunction restraining any such attitude. Judge Carland listened to the prayer for an injunction, and then he pointed out what true competition under the American interpretation of the law really is. He stated that, although there were penalties that go with the right of competition, the right must be protected at all costs, and he refused to issue the injunction. In the Bucks Stove & Range Co. case[2] you will find the identical principle involved and the exact method by which that principle was applied. The two cases are wholly similar. So a class distinction was created by the action of the two federal courts, one guaranteeing and insisting upon the necessity of the business men having a right to organize and adopt certain methods to protect their interests, and then one damning labor when labor adopted the same principle and applied it in the same way.

It is needless to give you additional cases of which there are a number. You will find that what our equity courts have done in connection with labor is to establish clean-cut class distinctions, giving to organized capital rights and privileges or assistance which are denied to labor. It might only be necessary to call your attention to the fact that state and federal courts, upon an employer's prayer—an employer who was a member of a national association of employers and had the services of that association—have granted to that employer an injunction restraining trade unionists from making any effort to organize employees. Thus our rights to attempt to organize, to go into the field and use the same methods that the representatives of employers' organizations do when they are helping

[2] Gompers *v.* Bucks Stove & Range Co., 221 U. S. 418.

to build up their organizations, are taken from us unless the employer grants his consent.

Let me cite a typical case[3] involving the United Shoe Machinery Co., which is probably as complete a trust as there is in the United States. There are many ways by which organized employers are able to work, and the method adopted by the United Shoe Machinery Co. was to have the superintendent of the machine shop and the foreman go to all of the members of trade unions and inform them that they must sign what we call a "yellow-dog" contract; in other words, an agreement with the firm that they would immediately withdraw their membership from the machinists' union or any other union, that while in the company's employ they would join no labor organization or labor union, neither would they take collective action with fellow employees on any matter affecting wages or any other condition of labor. If the machinists signed the contract there would be no more machinists' union in the plant. To meet that issue, to have it discussed on its merits, the machinists went on a strike. An injunction was issued by an inferior state court restraining them from remaining on strike, restraining the machinists' union from paying strike benefits to its members, who contributed to the strike fund for their self-protection and who went on strike for the specific purpose of preventing their employer from destroying their union. The injunction was granted and the state Supreme Court of Massachusetts held that the injunction was valid, and it stood. Thus the highest court in Massachusetts held that the right of workmen to organize is not a citizen's right, that workmen can only enjoy the right to organize when the employer is willing, and if he objects the highest court of the state will lend its influence to prevent any organization among employees.

This matter of equity goes back to the institutions we have inherited from the mother country. When Cardinal Woolsey was indicted for treason in the reign of Henry VIII, one of the items in the indictment was that he had used his power as Lord Chancellor to take out of the law courts cases that were making their orderly way, placing them under his jurisdiction because a peg had been found in the case on which equity might hang, and then rendering about the kind of a decision we would expect Cardinal Woolsey to have rendered.

[3] See United States Machinery Corp. *v.* Fitzgerald, 237 Mass. 537.

All of the lord chancellors of England, who are the highest judges in equity, have not been the same as those who endeavor to supersede the law courts in the exercise of their authority in equity. Perhaps one of the greatest lord chancellors that England ever had, who inherited some of his legal talent from his father, who had been Chief Justice of the King's Bench, was Lord Camden, who was made Lord Chancellor in 1765. I can express my opinion of equity courts as I am doing now, or in the ordinary conversation I have with my fellow-men when we sit around a table, but I have never been able to express my opinion of the danger which lies in our equity courts as effectively as Lord Camden has done in a sentence. The judge sitting in equity is no longer a law judge; he is supposed to have no law to govern him, and that is why he is sitting in equity. He uses his conscience and discretion and precedents. This is what Lord Camden said: "The discretion of a judge is the law of tyrants. It is always unknown. It is different in different men. It is casual and depends upon constitution, temper and passion. In the best it is ofttimes caprice; in the worst it is every device, folly and passion to which human nature is liable." And Lord Camden spoke at a time when the outstanding wrongs of British chancellors had been more or less overcome.

We inherited our equity practice in the same manner as we inherited the common law which governs us today. We were English colonies and as English colonists our ancestors carried out and applied the common law and the equity practice of the mother country. As the result of the attitude of many lord chancellors and what they were doing in England, certain basic rules of equity were established to hedge about the authority of the chancellor's court. They were known as basic rules of equity. One of those basic rules was that those who seek equity must do equity. In other words, those who seek equity must come into court with clean hands. The court of equity does not exist for the aggressor; it exists to protect and defend the weak and helpless who, having no statutory law to protect them because of the specific injury being done, go to the equity court and secure protection. Another rule of equity is that it shall not be used to punish crime. Another one is that it shall only be used to protect property from irreparable injury when there is no adequate remedy at law.

Our equity judges today restrain individuals from violating the law, assuming by their action that our law-enforcing agencies, our

police officers, our prosecuting attorneys, grand juries and petty juries, are insufficient to protect the American people, and that therefore a power and authority superior to the courts of law and the statutes is necessary. I shall cite one case.[4] Some years ago a gentleman who was not in agreement with the Eighteenth Amendment, and the Volstead Act, went into business in a wholesale way in the city of Chicago. He became a scandal and a reproach in the eyes of some of the well-meaning citizens and the pastors of some of the churches. Mr. Grossman, the man involved, was not arrested or indicted by a grand jury. No petty jury sat on his case. Instead, those who desired speedy action went to a federal judge and he issued an injunction restraining him from violating the Volstead Act. Then they went before his court and submitted evidence that he was continuing to violate the law. He could not be tried by a jury because no jury functions in an equity court; so he was brought before the bar to defend himself from the charge of contempt, and the judge, believing that the evidence proved that he violated the law, declared him in contempt and sentenced him to one year's imprisonment. However, before he went behind the bars the President of the United States pardoned him.

The point I want to make is this. Already our federal courts and state courts, following the evil practice that was begun by the early chancellors of England, are invading the functions of the law courts and interfering with the carrying out of the statutory law of the land by the duly constituted authorities. Having succeeded during the last thirty years in making the progress they have in connection with industrial disputes, apparently they feel justified or safe in extending their jurisdiction. What are the reasons why the American trade unions are interested? Because we can see no safety to ourselves as American citizens except under a government by law. We believe that our Constitution guarantees us a government by law, and so we are unwilling that government by law should be superseded or interfered with through courts of equity.

[4] Grossman *v.* U. S., 280 Fed. 683. See also U. S. *v.* Grossman, 1 Fed. (2nd) 941.

Make the Laws More Explicit

By Henry T. Hunt
New York Attorney

(Editor's Note: Mr. Hunt, who is now practicing law in New York and was formerly Mayor of Cincinnati, believes that some of the damage suffered by labor as the result of court decisions interpreting the anti-trust and other general laws, may be repaired by specific laws squarely aimed at these decisions. Among other things he believes that Congress should amend the Sherman Act by declaring specifically what conduct should not be deemed unreasonable restraint on interstate commerce, and specifically declaring that conduct not deemed unlawful for a corporation should under the act not be unlawful for a labor union.)

DURING 1926 and 1927 the Supreme Court decided two cases under the Sherman Act of paramount interest to organized labor. In the Pacific Shipowners case the act was held to operate as a shield to a labor association as against an association of shipowners (272 U. S. 359) and in the Bedford Stone Company case (274 U. S. 37) as a sword of the company against a labor association. Injunctions were granted in both cases. In the first case the employers were restrained from agreeing to employ only such seamen as the association permitted. In the later case the union was enjoined from directing its members not to work on stone partially fabricated by men working in opposition to it. In effect, the former case makes blacklisting of men engaged in interstate commerce unlawful and the injunction is applied to enforce the decision. The decision is of great benefit to labor and without the use of the injunction its operation would have been long delayed.

The lesson would seem to be that the injunction may be utilized as an instrument to promote the welfare of labor as well as to injure it. Yet the policy of the American Federation of Labor is to prevent altogether the use of the injunction in labor disputes.

From a comparison of the Bedford case with the Shoe Machinery case (247 U. S. 32, 62) it appears that persons united in a corporation may do what is denied to persons united in a labor association.

In the Bedford case the plaintiff was a corporation (one individual in the eyes of the law) and the defendant an association of some five thousand individuals. It was held unlawful for the defendant combination to unite to prevent its members from working on stone partially fabricated by persons working in competition with the union

member. In the Shoe Machinery case the defendant was a corporation made up of many thousands of stockholders and employees. It refused its machines to persons using them to complete shoes partially fabricated by machines of its rivals. The shoes, like the stone, were articles in interstate commerce.

It is true that the question presented in the Shoe Machinery case was complicated by patent rights. Nevertheless, the Sherman Act is as much the law as the patent acts. The Colgate case (U. S. *v.* Colgate, 250 U. S. 300), considered in connection with the Bedford case, presents more clearly the distinction between a corporation and an association with regard to the Sherman Act. In the Colgate case the defendant refused its goods to those wholesalers who failed to observe its prescribed retail price. The court said (p. 307):

> "In the absence of any purpose to create or maintain a monopoly, the act does not restrain the long recognized right of a private trader engaged in an entirely private business freely to exercise his own independent discretion as to parties with whom he will deal."

If an individual workman refuses to sell his labor for any reason whatever, he is within his rights. But if a number unite and agree not to sell their labor for work on articles partially fabricated by persons working in opposition to them, they violate the Sherman Act if the articles are interstate commerce. Unless the trader's privilege is somehow superior to the worker's privilege, it is difficult to see any reasonable distinction except the legal fiction that a corporation is a single person. If the Colgate Company had united with another to refuse the goods of both to those who failed to observe retail prices, the combination would have been guilty of violating the Sherman Act provided the court considered the restraint unreasonable (hurtful to the public) and the goods as having an interstate commerce character. Eastern States Lumber Dealers Assn. *v.* U. S., 234 U. S. 600, 614.

Apparently, if the Stonecutters had been united in the corporate form instead of in an association and not united for the specific purpose of refusing to work on such partially fabricated stone, they would have been within their legal rights.

What is sauce for the gander ought to be sauce for the goose, and as the corporate form is not convenient for labor unions they should ask Congress to declare that nothing which would be lawful if done by a corporation shall be unlawful if done by a labor association. Such legislation would reverse the Bedford Stone case and also, to a large extent, Duplex *v.* Deering, 254 U. S. 443.

Congress should, moreover, amend the Sherman Act by declaring specifically what conduct should not be deemed unreasonable restraint on interstate commerce. This was attempted in President Wilson's first administration and the Federal Trade Commission Act was the result. The act declared that unfair methods of competition should be unlawful and left it to the Commission to ascertain and enforce the standard of fair competition with an appeal to the courts.

It would seem, however, that it would be dangerous to labor to leave questions as to what constitutes unfair competition as between workers or as between employers and employees to a Federal commission. As to such matters Congress itself should declare what restraints, which are the result of a movement by associations of workers to obtain improved living conditions, shall be deemed reasonable and what unreasonable.

This is a legislative task of great difficulty, but it is not impossible of performance. Debates and discussions may well be expected to evolve standards to guide the courts. The first step in the task might be to examine each anti-trust decision to which labor objects, determine whether or not it is sound, and, if deemed unsound, to reverse it by specific legislation.

Probably the decision most injurious to organized labor is Hitchman Coal Co. *v.* Mitchell. This was not a case arising under the Sherman Act, but under the common law of West Virginia. Congress could mitigate it by declaring coal mines selling coal in interstate commerce to be instrumentalities of such commerce, and regulate the employment relation of miners as persons engaged in interstate commerce. The regulation could include a provision that employees should be free to belong or not to belong to any labor association and that any contract restricting such freedom should be deemed contrary to public policy and void.

The writer believes that a program seeking to reverse by legislation specific decisions would, at least, concentrate public attention on them and would succeed in achieving a part, at least, of the relief sought. The present program of the Federation which seeks to abolish the jurisdiction of the federal courts to issue injunctions in labor cases goes farther than what public opinion can be educated to support and even if successful may injure labor more than it helps.

The Sherman Act A Necessary Evil?

By I. L. Sharfman
University of Michigan

(Editor's Note: Professor Sharfman regards the Sherman Act as the bulwark of our competitive system. "Even labor can better afford to submit its policies and practices to the prohibitions against the restraint of trade than to permit the gates to be opened wide to concentration of control in commerce and industry." Any legislation seeking to grant labor an exemption from these or similar prohibitions should be consummated quite apart from the Sherman Act and should be based on legislative recognition of the distinctive social and economic conditions governing labor organizations, and should contain proper safeguards against the abuse of any such exemption.)

THE newer interpretations of the Sherman Act center about the developing judicial applications of the "rule of reason" as promulgated more than a decade and a half ago. They are increasingly called forth by the looser forms of combination, as disclosed, for example, in the various aspects of the trade association movement, rather than by the actual industrial mergers, through security control or property ownership, which led to the original enunciation of the doctrine of reasonableness as the guiding standard of statutory construction in this field. Substantively, they differentiate between cooperative efforts for the mere regulation of competitive conduct, which are deemed to be reasonable and lawful, and concerted undertakings calculated to suppress competitive conditions, which are condemned as violations of the law against restraint of trade and monopoly. The emphasis of public policy has thus been shifted from the prohibition of combination as such to a consideration of its essential purposes, controlling practices, and probable effects, as the dominant tests of validity. The regulation of competition rather than its compulsory enforcement is the chief end in view.

The supplementary provisions of the Clayton Act and the activities of the Federal Trade Commission in the elimination of unfair methods of competition and in the administrative enforcement of the anti-trust statutes are but a more positive reflection of this basic approach. Through these means the law has been amply adjusted to the pressure of recent industrial development. Concentration of

control, insofar as it is an expression of economic superiority rather than of predatory tactics or artificial restraints, no longer encounters legal obstruction. To the extent justified by the demands of changing economic conditions, the environment of free private enterprise has been adequately liberalized. Special situations, as in the case of combinations for export and consolidations among railroads, have been met by special enactment.

However, the Sherman Act still remains the primary public bulwark against the suppression of competitive conditions in the general industrial field. The fruits of the statute are not to be measured solely by the number and effectiveness of dissolutions actually accomplished; the influence it has exerted as a preventive brake upon overreaching projects in the organization of industrial control has probably constituted its most significant contribution. From the long-time standpoint there is as great need for such salutary restraint today, despite undoubted progress in the plane of business morality, as there was at the time of its enactment. The will to power and the willingness to yield to temptation are no mere ephemeral phenomena distinctive of a particular period or of a particular leadership. The enhanced business freedom that might result from the repeal of the Sherman Act or from its formulation in more explicit and more liberal terms would probably be purchased at too great a price, both to the general public and to the more responsible and constructive business interests. Even labor can better afford to submit its policies and practices to the prohibitions against restraint of trade than to permit the gates to be opened wide to concentration of control in commerce and industry.

Much can be said for the exemption of the activities of labor organizations from the incidence of the anti-trust laws, and especially against the prevailing use of the injunction in labor disputes, however restrictive a special labor code may be necessary to prevent abuse in the exercise of collective labor power. But the remedy lies, not in the relinquishment of authority over illegitimate concert of action in the industrial field, but in the recognition, through statutory enactment or judicial enlightenment, of the distinctive social and economic circumstances which condition the aims and activities of organized labor. The competitive process constitutes the fundamental public safeguard in modern industrial society. Unless we are prepared to substitute therefor a system of positive public control, it is indis-

pensable that freedom from artificial restraints be as far as possible effectuated. The Sherman Act provides the statutory articulation of this policy. As interpreted by the courts, it furnishes a flexible yet ultimate mandate for the maintenance of competitive conditions. The concrete difficulties which it often engenders, at least in the commercial and industrial sphere, are largely negligible as compared with the significance of the system of economic freedom which it seeks to maintain.

It is capital, as much as labor, which in recent years has talked of the repeal of the Sherman Act, maintaining that it was satisfactory enough, possibly, in the 90's when business was motivated by piratical ambitions, but not in this new era when men are good, business standards are raised, and there is no danger of a return to the old ways. I believe that this is very dangerous doctrine. I want to point out that the Sherman Act as now interpreted toward capital, toward business combinations, industrial combinations, is as liberal as it ought to be, and that any repeal of the Sherman Act or modification of its terms which is likely to give greater freedom to business is fraught with such danger that even labor can better afford to suffer some of the injustice that it feels it is subjected to through the Sherman Act than to tolerate or advocate its repeal, because whether or not we believe that labor ought to be exempt from the Sherman Act, the fact is that industrial combinations designed to monopolize or restrain trade are subject to the Sherman Act. To remove those restrictions from capital as a means of getting a necessary liberalization of the attitude towards labor, it seems to me, is a mode of procedure which is not altogether sound.

The Labor Injunction—A Red Flag

By Edwin E. Witte
Chief, Wisconsin Legislative Reference Library

(Editor's Note: Mr. Witte's contention is that if labor is enjoined by the courts in accord with the latest decisions, the result may be that labor will come to express itself outside of the forms of law. He points out that even employers are realizing that labor is openly and bitterly criticizing the courts as unfair. He claims that the restrictions imposed on labor by the courts "have operated rather to change the methods by which the results condemned as unlawful are accomplished than to prevent their occurrence." He cites as an example Chicago, where, despite the court decisions and criminal prosecutions, non-union materials are as effectively barred as they ever have been. He also cites the employment of gangsters and thugs by both labor and business in Chicago as a further result of court restrictions. He believes that the present situation is satisfactory to no one and calls for a new policy emphasizing adjustment to new economic conditions, rather than restriction, and recognizing that law enforcement is an executive, not a judicial, function.)

THE phase of the question to which I wish to direct attention is that of the results to society of the restrictions which the anti-trust laws impose upon labor combinations. The most apparent of these results is the vast amount of bitterness which these restrictions have aroused within the ranks of labor. Labor is 100% united in its condemnation of the courts and in its feeling that the law favors the employer. Even *Law and Labor,* the organ of the League for Industrial Rights, has acknowledged the widespread prevalence of this belief in discussing editorially, "What does the average workingman believe about injunctions?" Even if, as *Law and Labor* urges, this belief is without justification, its very existence is one of the most significant of the results of the present restrictions upon labor combinations. Nor is this bitterness on the part of labor toward the courts something merely transitory, due to resentment over the recent adverse decisions. As long ago as 1908 President Roosevelt in a message to Congress characterized this feeling as one of the most dangerous problems confronting the country. Since then this feeling has undoubtedly grown and no one can deny either its existence or its significance.

The other result of the present restrictions which I want to lay before you, is not so well understood, but not less important. This is that these restrictions have operated rather to change the methods by which the results condemned as unlawful are accomplished than to prevent their occurrence. The best illustration of this phenomenon is afforded by present conditions in the city of Chicago.

To begin with, we have the Bedford Cut Stone Co. case (274 U. S. 37) and the long line of decisions of which this case was the culmination, to the effect that it is illegal to boycott non-union materials. Several of these decisions were rendered in Chicago cases, including successful criminal prosecutions under the anti-trust laws against labor leaders for participation in such boycotts. Despite all the prosecutions and court decisions, however, non-union materials are quite as effectively barred from Chicago today as they ever have been. This, I believe, has been the result generally throughout the country of all the efforts to prevent building trades unions from boycotting non-union materials through legal actions.

This is not all that we can learn about the results of legal restrictions from the conditions now prevailing in Chicago. It has long been known that at least some of the Chicago unions have been none too scrupulous in their methods and that they have gained their ends by employing thugs and gunmen. Recently, it has come to light that the unions have not been the only groups in Chicago which have made use of such criminal methods to accomplish results they could not attain within the law. There have occurred several cases in which it has been proven that assaults, bombings, and murders have been paid for by trade associations, usually to coerce business men to act with their fellows in maintaining price policies. It has been demonstrated that not only are the methods used by these unions and trade associations identical, but that both employ the same gangs and gangsters. A criminal who has been notorious for his resort to violence in organizing unskilled workmen, has recently gained added notoriety through using the same methods in conducting a trade association. A gunman was recently killed in Chicago while occupying an automobile of a trade association, but at the time of his death and prior thereto was also the chief of the armed forces of a large labor union. From a Chicago man connected with the Joint Committee on Organized Crime, which has been investigating these conditions, I get this statement:

> "The extent to which merchants are using gangsters to stabilize prices and to exclude competition is increasing. To my astonishment, not only little business men but large-scale business is availing itself of these gangsters. There are sections of Chicago where almost every line of business is 'racketed'; slugging, bombing and homicide are the means."

Such conditions may exist nowhere else; but it has been observed frequently that when men are denied legal methods of accomplishing what they believe they ought to be allowed to do and what they feel they must do, they resort to more questionable methods to gain their ends. It is also well known that violence in connection with labor disputes is probably more prevalent in the United States than in any

other country. I believe that there is a direct connection between this prevalence of violence and the drastic restrictions which the law places upon trade and labor associations. As Professor Seager has said: "Nothing is more fatal to a law abiding disposition than the consciousness that the courts are partisan and that the law is unfair."

Whether the anti-trust laws have accomplished the purposes for which they were enacted is certainly debatable. Many of the most ardent supporters of the anti-trust laws insist that they have never been as rigorously enforced as they ought to have been and that, in consequence, they have largely failed of their purposes. Certain it is that in many lines business men do somehow find a way to act together and that there is no actual competition in prices.

Similarly, some form of organization of workingmen is inevitable. Labor unions, as we now know them, may conceivably be broken up by adverse court decisions, but before this happens we may look for intimidation, violence and sabotage on a scale heretofore unknown. If trade unionism should be destroyed, moreover, we cannot be at all certain whether company unionism, or criminal or revolutionary unionism will take its place; and the recent experience in Colorado suggests that company unionism may be but a prelude to revolutionary unionism.

As I see it, the present situation is satisfactory to no one. Either we must have still more drastic restrictions, or we must recognize combination as legitimate and allow such combinations to accomplish their purposes by all peaceful and lawful methods. To me it seems that the goal of industrial peace and progress cannot be reached through further restrictions. What we need is a new policy, which will accord more nearly with the economic and social conditions of the age in which we are living. What such a new policy ought to be, I have not the space to develop here at length. I suggest only that it ought to be a policy which will permit both trade unions and company unions to demonstrate what they can do for the advancement of their members and the interests of the public. It must also be a policy which recognizes that law enforcement is an executive and not a judicial function and which backs to the limit the executive who impartially enforces law and order in labor disputes. Finally, such a policy ought to include perfecting our machinery for the adjustment of labor disputes and the placing of emphasis upon adjustment, rather than legal restrictions. Such a policy, I submit, is much more promising than the policy of drastic legal restrictions, which experience has demonstrated has brought with it several results most harmful to society.

Injunction Legislation Pending in Congress

By Cornelius Cochrane

ORGANIZED labor during the past few years has regarded as increasingly important its legislative campaign to limit the issuance of injunctions in industrial disputes. The foregoing articles explain in part[1] why this objective has now become of primary concern.

Labor has appealed to the legislatures of many states for relief and this year the fight on the issue has been carried again[2] to Congress. Early last December Senator Shipstead introduced a bill (S. 1482) providing that "equity courts shall have jurisdiction to protect property when there is no remedy at law" and defining "property" to mean only something that is "tangible and transferable."

Irrespective of the arguments pro and con in regard to this particular bill, let anyone who doubts the existence of a serious social problem arising out of the injunction read the report[3] of the hearings before the sub-committee of the Senate Judiciary Committee. There are revealed two fundamentally different points of view expressive of conflicting human interests. Labor regards the injunction as a menace to the labor movement. There are others who deem it an essential safeguard to rights which are of equal and paramount importance to employers. Labor declares that the courts time and again unwarrantedly deprived it of the constitutional rights of free speech and free assemblage, that the legitimate activities of labor unions have been not only curtailed but many times denied and that their actual existence is threatened.

The most significant contribution toward a solution of this problem was the reporting of a substitute bill[4] by the sub-committee.

[1] See also "Why Organized Labor Is Fighting 'Yellow Dog' Contracts," by Cornelius Cochrane, *American Labor Legislation Review*, Vol. XV, No. 3, September, 1925, pp. 227-232.

[2] For the first time since the enactment of the Clayton Act in 1913-1914 this subject has been made an important issue in Congress.

[3] Hearings before a Subcommittee of the Committee on the Judiciary, United States Senate, Seventieth Congress, First Session, on S. 1482.

[4] For a full text of the substitute bill see the Congressional Record, Seventieth Congress, First Session, Vol. 69, No. 140, pp. 10318-10319.

In preparing this measure, the committee was assisted by such outstanding authorities as Dr. Edwin E. Witte, Professor Felix Frankfurter and Professor Herman Oliphant.

This bill declares as the public policy of the United States that the individual worker should have "full freedom of association, self-organization, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Section 3 declares the "yellow-dog" contract to be unenforceable. Sections 4 and 5 provide that no court of the United States shall enjoin any person interested in a labor dispute from doing singly or in concert any one of nine specifically enumerated acts including ceasing or refusing to perform any work or remain in any relation of employment, becoming or remaining a member of any labor organization, paying strike or unemployment benefits, giving publicity to the existence of a labor dispute and assembling peaceably to act in promotion of his interests in a labor dispute. Section 7 provides that no injunction may be issued except after notice and hearing and finding of fact by the court that unlawful acts have been committed and will be continued with resulting irreparable injury to complainant's property, that "greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief," that complainant has no adequate remedy at law, and that public officers cannot furnish adequate protection. A temporary restraining order may, under certain conditions, be issued without notice, to be effective for no longer than five days. No injunction shall be granted unless the complainant has made every reasonable effort to arbitrate. Section 8 requires jury trial in contempt cases. The definitions would make the act apply to every conceivable form of "labor dispute."

A bill as comprehensive as this will of course arouse extended discussion and difference of opinion both as to the wisdom of its policy and its effect. The committee has secured a vast amount of information by which its course of action may be guided. It remains to be seen if Congress will find an equitable solution to this problem, which is vexatious and wasteful to the community as well as to employers and workers.

One Day Rest in Seven

Investigation and Legislation Needed

By Louise Y. Gottschall

DUE to public apathy, thousands of men in the United States are now working day after day, seven days a week, three hundred and sixty-five days a year. The principal cause of this apathy is probably ignorance of the extent of seven day labor.

The latest study of the iron and steel industry, made by the United States Bureau of Labor Statistics in 1927,[1] comprises data obtained from 199 plants and 75,109 wage-earners, although a total number of 595 plants and 399,914[2] wage-earners are recorded in the Census for the year 1925.

According to the Bureau's study, in 1926, 7,501 out of 15,329 workers employed in blast furnaces, or 49 per cent, worked seven days each week; 3,553, or 22 per cent, worked six, seven, and seven days in rotation; and 923, or 6 per cent, worked six and seven days alternately.[3] In open-hearth furnaces, 6,982 out of 13,424, or 52 per cent, worked seven days a week; 1,796, or 13 per cent, worked six, seven, and seven days in rotation; 749, or 6 per cent, worked six and seven days alternately.[4] Of the 2,948 wage-earners in bessemer converters, 347, or 12 per cent, worked seven days each week; 147, or 5 per cent, worked six, seven, and seven days in rotation; 219, or 7 per cent, worked six and seven days alternately.[5]

The increase in 1926 in those working seven days each week as over 1922, was 20 per cent in blast furnaces, 2 per cent in bessemer converters, and 25 per cent in open-hearth furnaces.[6]

Of the blooming mills, standard rail mills, and plate mills, more seven-day labor was reported in 1924 than ever before.[7]

The 1923 study of the paper and pulp industry covers 39,061 wage-earners[8] out of a total of 120,677 recorded in the Census.[9] Of those studied, 717 out of 3,773 in pulp mills, 181 out of 2,944

[1] Wages and Hours in the Iron and Steel Industry, 1907-1926, Bulletin No. 442.
[2] Statistial Abstract of the United States, 1926, Table 747, p. 755.
[3] Bulletin No. 442, Table B, p. 34.
[4] Ibid, p. 70.
[5] Ibid, p. 53.
[6] Bulletin No. 442, pp. 34, 53, 170.
[7] Ibid, p. 10.
[8] Wages and Hours in the Paper and Pulp Industry, 1923, Bul. No. 365, p. 1.
[9] 1926 Abstract of Census, p. 760.

in book-paper mills, 161 out of 1,610 in news-print mills, 36 out of 798 in wrapping paper mills, and 57 out of 1,442 in writing paper mills worked seven days in a one week pay period.[10] This makes a total of 1,152 workers out of all the wage-earners, for whom data were obtained, who worked seven days a week.

At the second conference of paper box-board manufacturers in 1925, the Commissioner of Labor Statistics stated that in the industry sixteen establishments, employing 2,514 persons, were working Sundays. To this statement Secretary of Labor Davis appended the remark that "most of the plants which still cling to the antiquated, obsolete, 11 and 13-hour day and the seven-day week are located in states whose laws expressly forbid Sunday work," and also said that the manufacturers (twenty-five per cent of the total) who "still retain the system of long hours and Sunday work might destroy the industry."[11]

These data are but for three of many more continuous industries, and exemplify conditions that prevail in continuous processes. Recent data for the oil industry, notorious for the prevalence of the seven-day week, have not been obtainable.

In addition to continuous manufacturing industries, there is much seven-day labor. Smaller units, such as restaurants and gasoline service stations, where there is a dependence upon the continual presence of employees, are strongholds of seven-day labor. In an article in the *Survey,* reprinted in the February, 1913, edition of this Review, John Fitch estimated that the numbers of workers employed in these small industries and occupations aggregated many hundreds of thousands.

To remedy these conditions, progressive legislation proposes, not to limit continuous industries, but to prohibit continuous men. The "Standard Bill," prepared by the American Association for Labor Legislation for adoption by state legislatures, instead of prohibiting various kinds of work on Sunday, provides that in factory and mercantile establishments, employees, with a few necessary exceptions, shall be allowed one day of rest in seven. By adding one-sixth more workers, units can meet this requirement.

While fifteen foreign countries, including France, Belgium and Italy, had by June, 1928, ratified unconditionally the convention adopted by the official International Labor Conference in 1921,[12]

[10] Bul. No. 365, pp. 24-27.
[11] Reported in the *Monthly Labor Review,* March, 1925, p. 25.
[12] June, 1928, Chart of Ratifications, published by the International Labor Office.

specifying that employees in industrial establishments be given a weekly rest day of at least twenty-four consecutive hours, and while in Germany, Switzerland and Denmark legislation relative to the application of the convention has been passed, in this country only six states and the federal government have passed laws embodying the principle of one day of rest in seven.

The California and Connecticut laws unfortunately provide for exemption "in any case of emergency;" the federal law is applicable only to post-office employees; the Michigan law, only to interurban motormen and conductors. The Massachusetts law, in addition to the exceptions of the Standard Bill—which include janitors, watchmen, foremen in charge, employees who repair machinery, care for live animals, maintain fires, and set sponges in bakeries for not longer than three hours on Sunday—lists many exemptions. The New York law, in addition to the earlier exemptions, now specifically excepts hotel employees, and states that in the event of any "practical difficulties or unnecessary hardships" in carrying out the law, variations may be authorized "if the spirit of the act be observed and substantial justice done." In Wisconsin, workers in flour mills, milk and cheese plants, are exempted.

Despite the great lag in one day rest in seven in this country, many eminent authorities agree upon the advisability of its introduction.

Said John D. Rockefeller, Jr., before a meeting of employees of the Standard Oil Company of New Jersey in 1923: "The seven-day week and the twelve-hour day are uneconomic and anti-social, hence bad business; the worker is a human being, not a machine; he does his best work when he has adequate opportunity for home life, recreation, self-improvement, and worship. One day's rest in seven and a working day of reasonable length is the standard which has been set up in the company, and is being extended into the various branches of its business as rapidly as is practicable."

John M. Pattison, President of the Union Central Life Insurance Company, in 1914 said: "If an applicant came to us for insurance, and we knew that he was working seven days a week, we would refuse the risk."

John A. Voll, President of the Glass Bottle Blowers' Association of the United States and Canada, in an article which appeared in the American Labor Legislation Review in March, 1917, said, "the greatest factor in bringing on tuberculosis is overwork. * * * One day of rest in seven and the shorter workday will improve the

health of the wage-earner, will raise the standard of society, and will increase production."

In the conference of paper box-board manufacturers, called by the United States Department of Labor in 1924, it was agreed that the elimination of Sunday work would be beneficial to both employer and the employed.[13] A similar agreement within the oil industry may be found elsewhere in this issue.

In the leading case[14] tried in New York in 1915, the court held that the one day of rest in seven law "cannot be sustained as one enforcing the religious observance of any day" but as "a valid exercise of the police power of the State, for the promotion and protection of the public health and welfare."

Wherever the facts are known the extent and effects of seven day labor are striking. A few local studies are helpful. The federal government has as yet made no comprehensive study of the problem. Its study of the iron and steel industry, already mentioned, covers less than one-fifth the number of wage-earners employed in that industry. Its study of the paper and pulp industry covers less than one-third of the total number of paper and pulp workers. For many industries there is no recent information available.

The federal government should undertake a thorough study of seven-day labor, and let the public know the number of employees working seven days a week, and the serious consequences of such work. Meanwhile, individual states that have not as yet adopted the minimum requirements of the Standard Bill, should take this step during 1929.

---

[13] *Monthly Labor Review*, March, 1925, p. 25, ff.
[14] People *v.* Klinck Packing Co., 214 N. Y. 121, 108 N. E. 278.

Oil Industry Adopts One Day Rest in Seven

In the last issue of this *Review* an article stated that the Standard Oil Company of California had adopted a six-day week for drilling crews in place of "the traditional seven days."

According to latest reports, following a conference of oil operators in San Francisco, called by the Department of Industrial Relations on June 18 to consider the desirability of introducing the six-day week throughout the industry, many companies were favorable to the plan, while all were unanimous in approving the wisdom of it. As a result, 20,000 employees, formerly working seven days a week, will, it is stated, enjoy one day's rest in seven, and in practically all instances there will be no reduction in pay.

This movement within an industry in which the seven-day week has been so prevalent is most significant, and proves a realization on the part of operators of the economic value of one day's rest in seven.

International Labor Legislation

"Safety week", "health week" and other "weeks", now greet a new one devoted to an international inquiry into weekly working hours. During the first six days in October, an inquiry will be conducted by the International Federation of Trade Unions, Amsterdam, through its various national centers, by means of a uniform questionnaire. The actual number of hours worked in this one week, in specific industries in specified towns selected by the national centers, will be the information solicited. The inquiry is limited to the building trades, printing trades, chemical industry, metal industry, boot and shoe industry, textile industry, and mining. The trade unions of the towns included are to be asked to give the necessary cooperation.

The Eleventh Session of the official International Labor Conference opened in Geneva on May 30 and closed on June 16. There were present 136 delegates and 184 advisers, sent by 42 out of 55 member-countries. It was announced that the number of registered ratifications had already reached 300, and that 14 more countries had, since 1919, ratified the Berne Convention concerning white phosphorus, a larger number than had ratified in the thirteen years prior to 1919. On the eve of the opening of the Conference the Governing Body rejected the proposal of the British Government representatives for special action to bring about an early revision of the Hours Convention.

The two main questions before the Conference were:

(1) **Minimum wage-fixing machinery.**—This question had already passed through the first stage of the "double discussion" procedure, at the Tenth Session, reported in this Review in its issue of September, 1927. That Session adopted a Questionnaire on the subject, which was forwarded to the various countries. The answers formed a basis for consideration by the Eleventh Session and a Draft Convention was adopted by a vote of 76 to 21. This action was taken despite a minority report submitted in the name of the majority of the Employers' Group, proposing that the Convention be limited to home work, that the workers not be accorded numerically equal representation, and opposing "official fixing of wages" both in principle and by specific limitations.

A country ratifying the Convention undertakes to create minimum wage machinery for workers employed in certain trades—particularly home working trades—where wages are not regulated by collective agreement or otherwise, and are exceptionally low. The country is free to decide what trades shall come under this machinery, but only

after consultation with the organizations, if any, of the workers and employers in the trades concerned. The country is free to decide on the form of the minimum wage machinery, but it must first consult the workers and employers, it must provide that the employers and workers be associated in the operations of the minimum wage machinery in equal numbers and on equal terms, and it must provide that the legal minimum rate may not be modified by contract. The country is to provide for proper supervision and enforcement legislation, and to make an annual report to the International Labor Office. The text of the Convention is reprinted in *Industrial and Labor Information,* June 25, 1928, published by the Geneva Office. The Conference also adopted a Draft Recommendation drawing attention to certain general principles, based on practice and experience, which are believed to be most satisfactory.

(2) **Prevention of industrial accidents.**—This question had not been before the previous conference. The discussion showed that all delegates, whether representing countries, employers, or workers, were unanimous in their opinion that, for business as well as humanitarian reasons, no stone should be left unturned in the matter of accident prevention. However, some of the delegates, particularly those representing countries, opposed the adoption of steps looking forward to a Convention or Recommendation, and favored the adoption merely of a Resolution. They argued that accidents were to be attributed to the "human factor," rather than to machinery, and that therefore further legislation was useless. Other delegates, notably those representing workers, while not disparaging the value of voluntary effort, contended that legislation and regulation are also necessary.

The Conference finally, by a vote of 94 to 5, merely adopted a Draft Questionnaire on the prevention of industrial accidents. This is to be submitted to the various countries, and the question of industrial accident prevention was, without opposing vote, inserted in the Agenda of the next session. Moreover, the specific question of the protection of workers engaged in loading and unloading ships was also, without opposing vote, inserted in the Agenda, although the discussion had shown considerable opposition to its consideration.

Book Reviews and Notes

A Theory of the Labor Movement. By Selig Perlman. *New York, The Macmillan Company, 1928. 321 pp.*—The labor movement, according to Professor Perlman, is an organized campaign against the rights of private property, based upon the existence of a "scarcity of opportunity consciousness" on the part of manual workers. The nature of this campaign is conditioned by the particular environmental factors, or the conditions of life in the community—economic, political, mental and spiritual. Thus Professor Perlman has traced the developments in Russia, Germany, England and the United States by condensing into the pages of his small volume a wealth of significant interpretive material. This book is a rare find—a job which perhaps only Professor Perlman could do.

Benefits of the German Sickness Insurance System. By Franz Goldman and Alfred Grotjahn. *Geneva, International Labor Office, 1928. 188 pp.*—This study was undertaken because the factor of prevention in medical relief and public health is more important in Germany than in most other countries, and also because the German sickness insurance is so important in maintaining the health of the German people. In concluding, the authors state, "The German sickness insurance system has increasingly favored the use of benefits in kind rather than in cash, and has emphasized the principle of prevention rather than that of compensation. Furthermore, it has extended to the whole family the benefits formerly granted only to the insured individual."

Publicity for Social Work. By Mary Swain Routzahn and Evart G. Routzahn. *New York, Russell Sage Foundation, 1928. 392 pp.*—A practical discussion of publicity methods for agencies engaged in social work, by two active participants in publicity campaigns. Incidentally touches on publicity methods for obtaining public support for proposed social legislation, citing here and there examples of effective cartoons and intimate informative articles designed to create indirectly sentiment in favor of child labor laws, maternity bills, and the like. The suggestion is implicit that the same publicity methods used in social work in its more general sense, to which the book is primarily directed, may with advantage be used in promoting social legislation. The book's comprehensive character, volume, and wealth of illustrations suggest very vividly the opportunities lost by workers for labor and other social legislation who do not translate their statistics and kindred information into popular language, whether by colorful writing, graphic illustrations, cartoons, or otherwise.

A Century of Industrial Progress. By Frederic W. Wile. *New York, Doubleday, Doran & Company, 1928. 581 pp.*—A collection of chapters by thirty-two men—including Herbert Hoover, Charles Schwab, Jeremiah Jenks, Owen Young, Will Hays, Harry Guggenheim, and William Green, the one labor writer—outlining "the hundred fabulous years which transformed America from a wilderness into a World Power of electricity, steel and gold." Also commemorating the centenary of the American Institute.

Health and Wealth. By Louis I. Dublin. *New York, Harper and Brothers, 1928. 361 pp.*—As statistician for the Metropolitan Life Insurance Company Dr. Dublin has put into simple readable form significant material concerning the problems of public health. Of particular interest to readers of our Review are the chapters dealing with the health of workers, health insurance and the problems of old age. Although insurance with private companies is upheld and the theory of industrial pension plans with a minimum of state intervention defended by Dr. Dublin, sufficient factual material is presented to serve as an excellent basis for a program of social legislation.

Labor Relations. By Herbert Feis. *New York, Adelphi Company, 1928. 170 pp.*—A careful study of the personnel policies of the Proctor and Gamble Company. "The Proctor and Gamble Company is an outstanding instance of intelligent and sustained managerial initiative directed toward improvement in the economic position and security of the workers in its employment and the strengthening of the foundations of the business," says Professor Feis. Probably the most important aspect of the company's policy is its guarantee of forty-eight weeks employment each year. This not only provides security for the workers but significantly lessens the cost of doing business.

Piedpoudre Courts. By Gustav L. Schramm. *Pittsburgh, The Legal Aid Society, 1928. 219 pp.*—In this very thorough study of the small claim litigant in the Pittsburgh district, Dr. Schramm concludes that "the county court appears to be developing into another Common Pleas Court instead of an unique piedpoudre or small claims court." Among remedial measures proposed for adaptation by the County Court, the author recommends the curtailment of the squire's civil jurisdiction, the abolishment of the fee system and a greater centralization of administration. All of which, if adopted, would ultimately lead to the creation of a small claims branch.

Freedom of Association, Vol. II, Studies and Reports. *Series A, No. 29. Geneva, International Labor Office, 1927. 413 pp.*—Seven monographs on freedom of association in Great Britain, the Irish Free State, France, Belgium, Luxemburg, the Netherlands and Switzerland, in which the position of trade unions, and national legislation, legal decisions, and administrative practice relative to trade unions are studied. This comprehensive piece of work is a sequel to the comparative analysis of freedom of association published by the International Labor Office.

Interborough Rapid Transit Company against William Green, et al, Brief for Defendants. *New York, The Workers Education Bureau Press, 1928. 479 pp.*—This brief is a significant contribution to the field of labor problems for two important reasons. It represents a high-water mark in expert legal and economic argument regarding two inter-related labor problems: the "yellow dog" contract and the injunction. It contains much information that is exceedingly helpful to a proper understanding of these two problems, as, for example, a discussion of the social and economic consequences of the widespread use of such contracts.

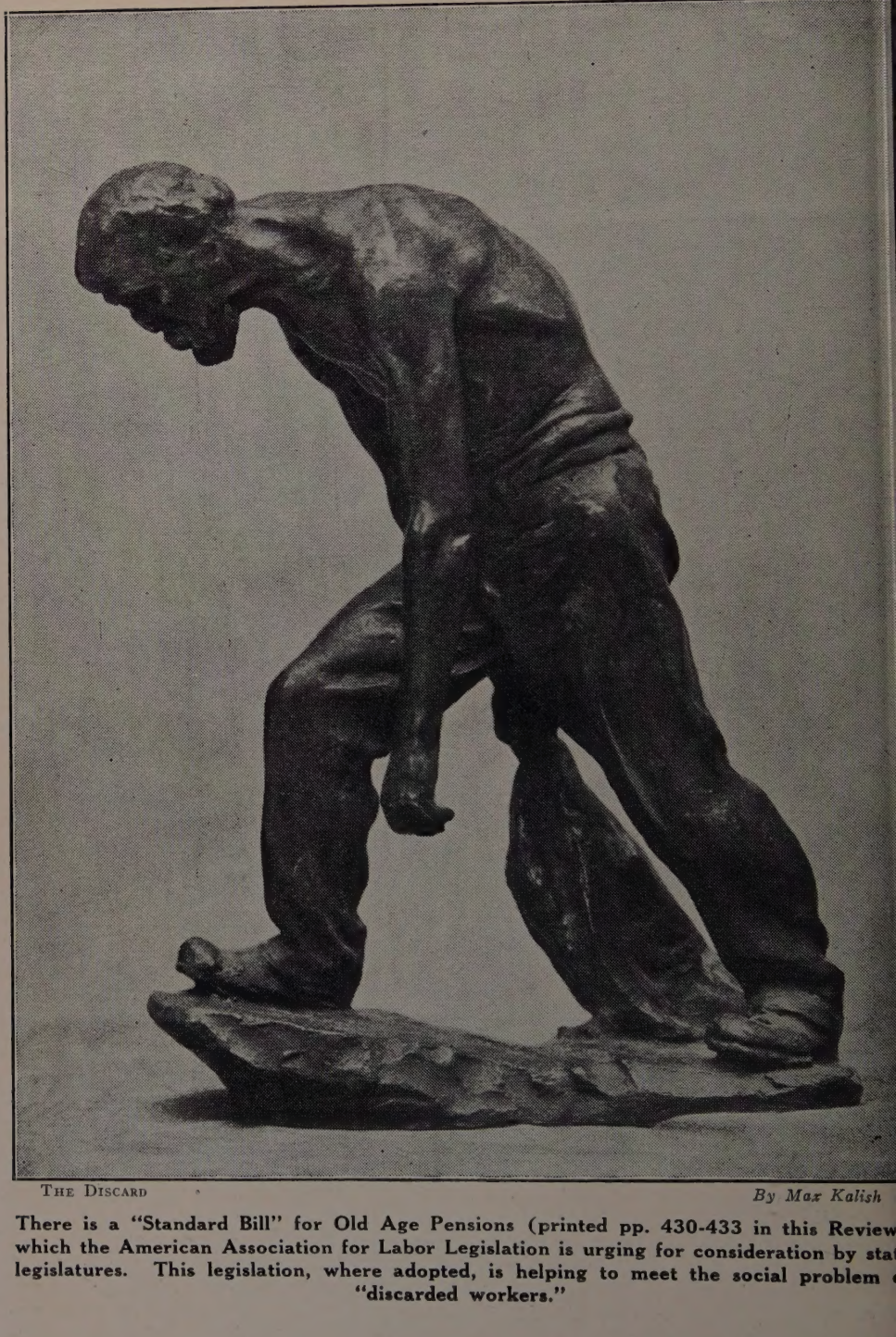
Don't Tread on Me. By Clement Wood, McAlister Coleman and Arthur Garfield Hays. *New York, Vanguard Press, 1928. 135 pp.*—Labor is urged "to assume the aggressive in legal matters, thereby removing some of the inequalities of the usual industrial dispute, establishing precedents in favor of labor and creating a new respect for the labor movement on the part of its members, the courts and the public." The authors offer many suggestions as to how labor as well as other minority groups may undertake through legal procedure to protect their rights of free speech, free press and free assemblage. The attitude of the majority of courts when a real issue is at stake would seem however, to present a serious obstacle to carrying these suggestions into practical operation.

Harvey Baum: A Study of the Agricultural Revolution. By Edward S. Mead and Bernhard Ostralenk. *Philadelphia, University of Pennsylvania Press, 1928. 149 pp.*—An analysis of the agricultural problem of today. Proves that scientific farming is the salvation of the individual farmer but detrimental to the mass of farmers because of overproduction. Agriculture must adjust itself to the present day rather than expect relief from legislation.

William Gregg: Factory Master of The Old South. By Broadus Mitchell. *University of North Carolina, Chapel Hill, 1928. 331 pp.*—"William Gregg, born in 1800, saw that the welfare of the South could not lie exclusively in a one-sided agricultural economy—that it must diversify its interests, primarily in the direction of an industrial regime. It had power, it had labor, its factories could be built at the source of supply."

Broadus Mitchell, exceptionally well equipped by his economic research in the South, sets forth interestingly the main facts in the life of Gregg, and at the same time records in detail the operations of the Graniteville cotton factory which he set up in South Carolina. It was "a benevolent despotism"—a fore-runner of many such which have since developed—and "everyone who wishes to understand the New South should read this absorbing and pivotal chapter in the history of the 'old' and 'middle' period," says the publisher's blurb, with which we whole-heartedly agree.

He Has Earned An Old Age Pension



THE DISCARD — *By Max Kalish*

There is a "Standard Bill" for Old Age Pensions (printed pp. 430-433 in this Review which the American Association for Labor Legislation is urging for consideration by sta legislatures. This legislation, where adopted, is helping to meet the social problem "discarded workers."